

EXECUTIVE ORDER ON INTELLIGENCE ACTIVITIES

OVERSIGHT HEARINGS BEFORE THE SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES NINETY-SEVENTH CONGRESS SECOND SESSION ON EXECUTIVE ORDER ON INTELLIGENCE ACTIVITIES

OCTOBER 28, NOVEMBER 12, DECEMBER 15, 1981, AND JANUARY 27, 1982

Serial No. 112



Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

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EXECUTIVE ORDER ON INTELLIGENCE ACTIVITIES

WEDNESDAY, OCTOBER 28, 1981

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 9:40 a.m., room 2141, of the Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Kastenmeier, Schroeder, Washington, Hyde, and Lungren.

Staff present: Catherine LeRoy, chief counsel; and Thomas M. Boyd, associate counsel.

Mr. EDWARDS. Good morning. The Subcommittee on Civil and Constitutional Rights scheduled this morning a hearing to explore some of the issues raised by the proposed Executive order on intelligence. News reports over the last few weeks have indicated that the draft order represents a significant change in intelligence policy and the manner in which intelligence activities are conducted in this country. I might point out that this is not a classified document that we are referring to.

Any shift in the balance of power between the Attorney General and the FBI on the one hand, and the CIA on the other in the domestic area is of vital concern to the House Judiciary Committee, which has jurisdiction not only over the Justice Department, but, under the House rules jurisdiction over espionage and subversive activities affecting the internal security of the United States.

And, of course, a major responsibility of the subcommittee is in the area of civil liberties. The most recent news accounts, however, indicate that the Senate Intelligence Committee is about to send a series of recommendations to the White House calling for changes in what I believe are areas of vital importance. I am assured by people close to the intelligence community and to the Senate Intelligence Committee that the administration is apparently indicating a willingness to deal with a number of these recommendations and that changes are being made. The changes that are being discussed do not represent all or even most of my concerns, but they are important. And they do show a flexibility that up until now has been absent.

I believe the very scheduling of this hearing has had a positive impact in that respect, but because the situation is so fluid as we are sitting here this morning, and because we do not really want to

interfere with any serious negotiations that may be going on, I have agreed to postpone the hearing for a week. I have reason to believe that by then there will be a new draft reflecting some of the changes recommended by the Senate.

Again, I personally have additional concerns beyond those described in the press. It is my belief that this order represents a serious departure from current policy. For the first time the CIA would be authorized by Presidential directive to spy on Americans, using techniques found abusive by the Rockefeller Commission, the Church committee and the Pike committee. Such important changes in policy and procedure deserve to be aired in a public forum. This is public business. The public as well as the Congress is entitled to know about what the Intelligence Committee has in mind for the American people.

The public is also entitled to know that pressure has been placed on this committee to withdraw from this debate altogether, that the CIA has refused to provide the chairman of the House Judiciary Committee with a copy of the proposed order, a document that is not classified, and a document that has been in the hands of the press for over 2 weeks.

And the Justice Department has declined an invitation from this subcommittee to appear here today. Prospective witnesses have also been pressured not to appear. Until last evening we had planned to have two expert witnesses, but because of the changes that have taken place starting yesterday afternoon with the announcement in the Senate by Senator Goldwater, these two witnesses will postpone their testimony. The first witness was to be former Senator Birch Bayh, who in the 96th Congress and previously to that was chairman of the Senate Select Committee on Intelligence. The other witness was to be Mr. Kenneth C. Bass III, who in the last administration from 1977 to 1981, was Counsel for Intelligence Policy, Office of Intelligence Policy and Review, in the Department of Justice.

Now before I yield to my colleague from Illinois, I ask unanimous consent to insert in the record the draft order, the letter dated October 13 from Mr. Rodino to Director Casey of the CIA, asking for a copy of the draft, a letter dated October 27, 1981, from Mr. Casey to Mr. Rodino, refusing to send a copy of the draft to Mr. Rodino, a letter of October 16, 1981, signed by Mr. Rodino and me to the President of the United States on this subject, and a letter from the Department of Justice regretting that they cannot participate in a committee hearing on the draft order.

[Material appears in appendix.]

Mr. EDWARDS. Now I yield to the gentleman from Illinois, Mr. Hyde.

Mr. HYDE. I thank the chairman for yielding. I strongly protest these hearings, which can serve no useful purpose but attempt to once more unfairly criticize the administration concerning an Executive order which it has the right and the power to issue, and on which it has consulted about with the appropriate committees in closed session. The backup material we are talking about is classified, and we have a Select Intelligence Committee in the Senate, which has been consulted with and met with the administration making suggestions. This process is barely underway. We have an

excellent Select Intelligence Committee in the House under the able chairmanship of Congressman Boland of Massachusetts, which has also been meeting in closed session.

To have a dog and pony show with the media here, to ignore discussed matters which must be kept classified and not to await the developments from the two committees which are charged directly with the responsibility of these issues, represents politics of the rawest sort. I just wonder why. Now, I did not know who the witnesses were going to be until this morning. I expected to see people come in with hoods over their heads.

These matters are very sensitive. They are being discussed with the relevant, appropriate committees on which there are Democrats as well as Republicans. You said the administration has not been flexible. I think it has shown maximum flexibility. We are talking about national security.

I just think it is so unfortunate. It is so wrong for us to hold open hearings and listen to witnesses talk about something on which this committee has only peripheral jurisdiction. Why not wait until the intelligence committees have done their work? Why hold hearings concerning material which is classified and which by its nature cannot be made public? Why not seek a recommendation from Congressman Boland or Senator Moynihan as to whether we should hold open hearings?

I just think it is wrong. I think it is simple opportunistic politics. I think it is unfortunate, and I would hope the chairman of this subcommittee, a man of patriotism and learning and sensitivity, would not utilize this forum to abuse the administration on a matter such as this.

And I thank the gentleman.

Mr. EDWARDS. The gentleman from Wisconsin, Mr. Kastenmeier.

Mr. KASTENMEIER. I have nothing to say, Mr. Chairman. As you know, I have not been consulted about this either. I think this is an important area, however. I will say this: I think it is too important an issue to allow one or two committees, which in the past do not necessarily have a good track record with reference to the questions that are at issue here—for that reason, I support these hearings.

Mr. HYDE. Does your last remark apply to when Senator Bayh was chairman in the Senate of the committee allegedly without a good track record?

Mr. KASTENMEIER. I think what the Bayh committee produced with legislation with respect to the Foreign Intelligence Surveillance Act, along with the House and Senator Kennedy's Committee on the Judiciary, was admirable. I think what has happened too often is that committees secretly, because these are, as the gentleman from Illinois points out, essentially confidential security items, in secret agree to things that the American public, and I think the rest of Congress might well wonder about, they may not discover for years to come. To the extent that we change the ground rules, that they are being changed, and that we may retreat to the past, in terms of all of the abuses, I think it is such an important issue, that it is clear that it is something that requires public attention and public congressional scrutiny, as well as secret congressional scrutiny.

For that reason, I support the chairman in the endeavor.

I do recognize the difficulties he is having in that connection.

Mr. EDWARDS. The gentleman from California, Mr. Lungren.

Mr. LUNGREN. Thank you. First of all, I think it is good that at least we are postponing this hearing for 10 days. I would have to join the gentleman from Illinois in saying that I, too, was unaware of what, if any, witnesses we were going to have here. That is, until I was handed a folder about a minute before you began your statement. I think we ought to be concerned about a proliferation of committees. I am not suggesting that ultimately we might not want to be involved in this, but I think one of the lessons we learned in the past was that the proliferation of committees to which the intelligence agencies had to report caused some great difficulty.

We have some problems with the track records of some of our committees. Perhaps though, in a little different manner than has been previously suggested. We have had some problems with information coming out of those very committees, statements even made by the chairman of the Senate committee in a prior Congress with respect to information about what the CIA was or was not doing in Pakistan with regard to Afghan rebels. And I think one of the things on which there appeared to be some consensus in this Congress was that we ought to limit jurisdiction so that we do not have a proliferation of committees and an opportunity for more and more leaks to occur, whether intentional or not.

Therefore, I think it is somewhat premature for us to jump into this effort, when we do have constituted committees of the House. There are several members of the Judiciary Committee who serve on the House Intelligence Oversight Committee. I have never been one to find that they were not serving in our best interests or that they had made any effort to keep from us the proper information.

They recognize that a suggestion has been raised with respect to the proposed new order that might, in fact, take some jurisdiction from the FBI and give it to the CIA, and we may claim some jurisdiction in that matter. In essence, I think this is being handled by other committees. And if our effort is necessary, I think that we can proceed in a more timely fashion.

I thank the chairman for the time.

Mr. EDWARDS. I thank the gentleman from California.

The gentlewoman from Colorado.

Mrs. SCHROEDER. Thank you, Mr. Chairman. I want to compliment the chairman for paying attention to one of the most serious issues that we have confronting us today. I must remind people that I think the chairman has always believed that this is a government of laws and not of men. I think that should apply to all aspects of the government, and that is what we are trying to do.

I think that delaying and making sure that there is some agreement, and if there is not, then we can reconvene, I think that is a very reasonable approach. I cannot say often enough that you cannot say that it is a government of laws and not of men, unless you apply that principle across the board. You cannot exempt some agencies from operating under the law or from operating under congressional scrutiny and oversight.

So, I hope that the subcommittee continues its interests and hope that this very difficult and sensitive issue gets solved.

Mr. EDWARDS. I thank the gentlewoman.

The gentleman from Illinois, Mr. Washington, is recognized.

Mr. WASHINGTON. I also want to commend the chairman for conducting or at least attempting to conduct these hearings. I gather the opposition is not saying that we don't have the jurisdiction, rather they are saying that we should not exercise that jurisdiction. That seems a bit strange to me. The American press is exercising that jurisdiction every day by commenting adversely upon this proposed order. Even today the headlines of both of the local papers indicated that Senator Barry Goldwater and Senator Patrick Moynihan were absolutely opposed to any extension whatsoever of the domestic spying on the part of the CIA in this country, and I gather the panel, based on what they are saying supports them in that negative approach to the President's proposed order.

There is no point in this committee hiding; the matter is out. It is being brooded about all over the country. People are disturbed about it. There are meetings in many cities relative to this proposed order, and there is adverse feeling about it.

I'm going to start by making it clear at the outset that I'm not opposed to law enforcement or intelligence functions of the Federal Government. Those are legitimate functions which must be carried on in a well-ordered society, and they are essential for the protection of the freedom of our social order. But the way to protect a free and open society against totalitarianism abroad is not to replicate the KGB at home. It has never been demonstrated to me that you can fight totalitarianism with totalitarianism. History is replete with examples of what happens when you try to do so. Nor do I want my remarks to be characterized as being against the administration or against the intelligence community. Our intelligence agencies have a responsible, difficult task, and I certainly would not be party to anything that threw impediments in their way, as long as they do not exceed the bounds of the Constitution.

What we are hearing is that there is a clear encroachment upon those bounds. This is not a football scrimmage we are dealing with here. I am motivated by sincere commitment to preserve the democratic ideas of this country and also by a desire to protect the agencies themselves from political abuse. And that is a paramount factor in my mind or in the mind of anyone who has slept through, as we all did, Watergate.

The administration has put forth a number of proposals, I gather, which would significantly alter the ability of the Congress and of the public to guard against those abuses. The Intelligence Identities Protection Act would make it a crime to disclose the identity of an intelligence agent, even absent malicious intent. And this House voted on that.

Proposed changes in the Freedom of Information Act would make it difficult for an individual to learn if he were a target of surveillance and would deny a meaningful opportunity to correct misinformation which had been collected by Government agencies.

Proposed changes in the exclusionary rule governing criminal prosecutions would remove many practical incentives for law enforcement agencies to stay within the bounds of permissible con-

duct. Removal of the 19th century prohibition against military involvement in domestic enforcement known as posse comitatus has paved the way for a significant erosion of the separation between the armed forces and civilian law enforcement agencies.

It is interesting to note that the same rationale, the need to strengthen enforcement of drug laws is being used here to extend, as I understand it, the domestic jurisdiction of foreign intelligence agencies. While we do not approve of illegal use of controlled substances—no one in their right mind would—it should be said that this loosely stated rationale could extend the CIA's domestic intelligence and surveillance activities to cover the day-to-day affairs of many millions of Americans, who, regardless of how you feel about it, make occasional use of marihuana or cocaine, according to a lot of the newspaper articles.

It is my understanding that the proposed Executive order would also have a significant chilling effect which could undermine the functioning of other agencies. It provides for surveillance of U.S. officials, ostensibly to make sure that they are not under hostile surveillance. It resolves a turf battle between the FBI and the CIA by giving virtually untrammelled powers to the CIA. It orders heads of all executive departments and agencies to honor CIA requests for cover and support. It allows the CIA to dictate budgetary reprogramings with 10 other agencies, subject only to appeal directly to the President by the agency head involved.

It protects the CIA from embarrassment by providing for proceedings to protect not only its sources but its methods and analytical procedures in making it difficult to assess the validity of CIA conclusions and analyses of events. Any agency would love such a provision. I doubt it contributes much to national security, most likely national chaos.

It allows the infiltration of domestic organizations—and that is what Senators Moynihan and Goldwater were speaking about today—and provides that this infiltration can also be used to influence the activities of the organization or its members.

If it is approved by the President the order would permit the collection and dissemination of information of U.S. citizens, gained, coincidentally, through aerial reconnaissance, flights over the United States, provided only that the purpose of such flights was not to target the specific individual. According to the Washington Post, these reconnaissance photographs can read a license plate.

The order apparently authorizes mail openings and other forms of domestic surveillance, subject only to procedures approved by the Attorney General. It establishes no internal or external mechanism for reporting or correcting or punishing violations. It provides only that the Attorney General shall report to the President violations of the Constitution or the laws of the United States—of which he somehow becomes aware. No other action is prescribed in the order.

Finally, the proposed order contains a catchall phrase which effectively short circuits what few protections it contains. In addition to its other overly broad authorizations, the order contains a catchall authorization to permit such other intelligence activities as the President may direct from time to time.

Mr. Chairman, I submit that this proposal goes too far in creating the framework for precisely the sort of regime that we are trying to defend against abroad. There's little opportunity for review, and a very great likelihood for intimidating those who demand review. Laws and regulations of this finality should not be passed first for the moment when the result is very likely to be abused for a long time to come.

It will undermine the trust and confidence of our citizens in their Government. It would give rise to the worst sorts of political abuses and force dedicated intelligence officers to spend time and resources tracking political domestic opponents for whoever occupies the Oval Office at the time. It would bring chaos every time there was a change of administration.

Let me give you an example from my own personal, but bitter, experience of just how crazy this sort of thing is, and how far afield it can go and how uncontrollable it is once it starts. I happen to have been the subject of a long-time observation by the Chicago Police Department—domestic spying. They infiltrated religious organizations. They infiltrated organizations such as we put together to investigate crime in our community to see if we could do something about it. They infiltrated organizations such as PUSH and the Urban League and others. I use "infiltrated," of course, with tongue in cheek. They recorded events that were going on there.

For example, we asked five U.S. Congressmen to come to our State to investigate the killing, or assassination, I might say, of Mark Hampton and Fred Clark by the Chicago police. Those five Congressmen were also investigated. This has been documented. And if it were not for the Freedom of Information Act, I would not be privy to this horrendous invasion of my own privacy.

Mr. WASHINGTON. I was engaged in political opposition of the late mayor and his political machine. And if anybody knows Chicago, those policies in that machine need constant criticism and public discussion. I was also trying to combat crime in my own community. So, I am a victim of this sort of thing, and you can understand my ire and sense of urgency about getting into the guts of this business at this particular moment, without further delay.

Mr. Chairman, I think you can understand my concerns are genuine. I do not want to see a situation develop in which, for example, our students blame the CIA for everything that happens domestically just as French or West German students now blame the CIA—rightly or wrongly—for everything that happens overseas. I do not want to see a situation develop where revelations of the sorts of black bag activities that have gone on overseas produce doubts and questioning among our own people about the activities of our Government at home.

I do not want to see a situation develop again in which our best thinkers and scholars and artists are afraid to express themselves publicly, or even privately, to their friends, without fear of being caught up in some widely flung security apparatus and having their thoughts and words misunderstood.

Finally, I do not want to see political expression and political activity driven underground, where it can become paranoid and warped, away from the light and exposure of public scrutiny. I think these are legitimate concerns, and I hope the committee will

continue these hearings until such issues are resolved. And I want to commend you for doing so. And I am very much disturbed that anyone would exercise pressure upon you, Mr. Chairman, to prevent you from carrying on legitimate oversight of this committee.

Mr. EDWARDS. I thank the gentlemen from Illinois. I just want to emphasize that we have immense jurisdiction in these matters. We are not here to preside over the dissolution of the Judiciary Committee in this important area. This subcommittee was the first congressional unit to have public hearings on Cointelpro, the activities of the FBI of a number of years ago. We deal in these matters all the time with the FBI and the Department of Justice. We are responsible for all of the laws affecting the Justice Department and for the authorization of its budget every year. This jurisdiction has been in this committee forever, and I trust it will stay in this committee. We are not about to retreat on this important jurisdiction.

Do any other members desire to be recognized?

The subcommittee is adjourned.

[Whereupon, at 10:02 a.m., the hearing was adjourned.]

EXECUTIVE ORDER ON INTELLIGENCE ACTIVITIES

THURSDAY, NOVEMBER 12, 1981

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 9:35 a.m., in room 2154, of the Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Kastenmeier, Schroeder, Washington, and Sensenbrenner.

Staff present: Catherine A. LeRoy, chief counsel; and Thomas M. Boyd, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

This committee has oversight and authorization responsibility for the Department of Justice, including the FBI. The rules of the House provide that such matters as espionage and subversive activities affecting the internal security of the United States are also within the jurisdiction of the Judiciary Committee.

The proposed Executive order that is the subject of this hearing appears to shift the balance of power between the Attorney General and the FBI on the one hand and the CIA on the other, with respect to intelligence activities within the United States. It also appears to remove standards and ease restrictions on the use of certain investigative techniques and the conduct of certain intelligence activities within this country. All of these are matters within the jurisdiction of the House Judiciary Committee.

This public issue—how the intelligence agencies intend to operate within the United States—is something the American people should know about and discuss. The discussion has nothing to do with spies and counterintelligence. We all agree that our Federal police and investigative agencies must have the weapons to deal with threats to our national security. The problem is that unless the public and the Congress, as the elected representatives of the people, know the rules of the game and unless there is accountability and a system of checks and balances operating here, the intelligence community can go further than Congress intended. The absence of outside dispassionate review can lead to hysteria within that community which could result in trampling the rights of the people. This the CIA and the FBI did, beginning shortly after World War II and continuing until the early 1970's, when Congress

finally asserted its public obligations and demanded compliance with the Constitution and the law.

We must continue to remind the CIA and the White House that this is the United States, and one of the principles of our Founding Fathers insisted on was that the people through their elected representatives establish the rules governing the police. And in this instance I include the FBI and the CIA. The police do not make the rules, they must follow the rules.

We are pleased to have as our witness today the distinguished former member of the other body, Senator Frank Church. Senator Church was chairman of the original Senate Select Committee on Intelligence. The important work of that committee is responsible in large part for the creation of the existing order and reiteration of its fundamental principle that the CIA's jurisdiction is abroad and that the FBI's jurisdiction is here in the United States.

We had another witness scheduled for today—Mr. Kenneth C. Bass III—who as Counsel for Intelligence Policy, Office of Intelligence Policy and Review in the Department of Justice from 1977 to 1981. Mr. Bass had a very serious illness in his family and is unable to be here today; however, we will have plans to have him here with other witnesses next week.

Senator Church, you may come to the witness stand. Before doing that, I yield to the gentleman from Wisconsin, Mr. Kastenmeier.

Mr. KASTENMEIER. Thank you, Mr. Chairman. I have no comment other than to express my pleasure at the fact that Senator Church is with us this morning and want to express my own appreciation to you for endeavoring to bring these matters to the public attention, and I look forward to what our witness has to say.

Mr. EDWARDS. Thank you. The gentlewoman from Colorado.

Mrs. SCHROEDER. I do want to welcome Senator Church to the committee. He's been a good friend and a good neighbor, and we are delighted to have him here.

Mr. Chairman, I would also ask permission to put an editorial in the record from the Rocky Mountain News, which is not really a strong voice of liberalism, but one in the Rocky Mountain area coming out against the Reagan proposal on the CIA's role of going into the domestic spying, if the chairman wouldn't mind.

Mr. EDWARDS. Without objection, the editorial will be included in the record at this point.

[Information to be furnished:]

[From the Rocky Mountain News, Nov. 5, 1981]

THE CIA'S ROLE

President Reagan is being urged by advisers to sign an executive order permitting the Central Intelligence Agency to spy on Americans here at home, to infiltrate domestic groups and corporations and to manipulate them.

The president should reject such a dangerous course and perhaps get himself better advisers. The order they are pushing is a threat to civil liberties. It also could lead to a scandal of Watergate proportions and cripple the Reagan administration.

The National Security Act of 1947, which established the CIA, banned it from a police or internal security role in this country. When the agency strayed into domestic spying as during the Vietnam War, it earned intense public criticism, which lowered its morale and effectiveness.

Thus friends of the agency, such as Sens. Barry Goldwater and Daniel Patrick Moynihan and former CIA Director Stansfield Turner, are arguing that it must stay

away from domestic intelligence, which by law is an FBI function. Turner makes this convincing case.

"CIA officers are not trained to operate in the domestic environment, where regard for law is a primary consideration. The ethic of intelligence is to get the job done in spite of local laws. It is unwise and unfair to force CIA operations into the domestic arena. It isn't necessary, either, for that is exactly where FBI officers are trained to operate."

When Reagan's advisers ask him to sign on the dotted line, he should keep Turner's key words in mind: unwise, unfair, unnecessary.

Mr. EDWARDS. Senator Church, we welcome you. You may proceed.

TESTIMONY OF HON. FRANK CHURCH, FORMER U.S. SENATOR FROM THE STATE OF IDAHO, WHITMAN AND RANSOM

Senator CHURCH. Mr. Chairman, members of the committee. I appreciate the opportunity to testify this morning on what I regard to be a very important subject.

In 1928, Justice Louis Brandeis wrote:

Decency, security, and liberty alike demand that Government officials shall be subjected to the same rules of conduct that are commands to the citizens. In a government of laws, existence of the Government will be imperiled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example.

Those words have lost none of their cogency with the passage of time. It remains true that there can be no preservation of democratic government or individual liberty outside the law.

Nevertheless, when judged by past performance, many engaged in our Government's intelligence activities seem to view the law quite differently; they apparently resent its constraints, and regard it not merely as a nuisance, but as an impediment to national security. Due to the nature of their work, they have, at times deemed themselves entitled to disobey the law.

Those who hold this belief will be pleased with the newly proposed Executive order to govern our intelligence agencies, now in its third revision. This newest version is plainly designed to enlarge the role of the CIA inside the United States, with respect to spying on American citizens and conducting covert operations in our own country, while diluting the role of the Justice Department as a check on the legality of these activities.

Expanding the scope of the CIA's involvement inside the United States is, in my judgment, as unwise as it is unwarranted. In this regard, I agree with the assessment made a few months ago by Adm. Bobby Inman, Deputy Director of the Agency, when he declared that the "job of the CIA is abroad."

Believe me, there is plenty abroad to occupy its time and attention. Dangers multiply as the nuclear arms race continues unabated with the Soviet Union. New regional powers have developed—or stand on the verge of developing—nuclear weapons of their own. American citizens are exposed, as never before, to the threat of savage destruction.

In this dangerous setting, it is imperative for the United States to maintain a strong, effective intelligence network. Without it, we would be unable to gage our defense requirement; to forecast hostile action; or, indeed, to conduct an informed foreign policy. "The wind and the waves are always on the side of the ablest naviga-

tors," wrote Gibbon. Those nations without a skillful intelligence service must navigate beneath a clouded sky.

The CIA was created to help fill this navigational need. While one may debate the quality of the agency's performance, there has never been any question about the propriety of its involvement in the process of gathering and evaluating foreign intelligence. Nor have serious questions been raised about the means used abroad to acquire such information, whether from covert sources, technical devices, or by clandestine methods.

What became—and remains—controversial is something quite apart from foreign intelligence. The questions concerning the CIA have had to do with its covert operations, the surreptitious efforts of the agency to control, coerce, mislead and manipulate people, or, in the vernacular of the trade, even to terminate them, combined with the unlawful methods that have been used by the agency in the past to spy on innocent Americans here at home.

Whatever view one takes of covert action abroad, the need for the CIA to comply with the law in its treatment of American citizens here at home, should be less ambiguous. Yet, the Senate Select Committee on Intelligence, which investigated the intelligence agencies during 1975 and 1976, found the CIA to have been deeply involved in blatantly illegal conduct designed to spy upon, injure, and harass thousands of innocent Americans. The factuality of the committee's findings has withstood the test of time and to this very moment, remains unchallenged.

The committee discovered:

That, in the early 1950's, the CIA began a program of surreptitiously testing chemical and biological materials, which included drug testing on unwitting Americans, for the purpose of altering human behavior. These tests, taken in complete disregard of individual rights, resulted in the death of at least one victim, with indeterminate effects upon the health of others.

That, between 1953 and 1973, the CIA secretly and unlawfully inspected the mail of American citizens. The sweep of this program is shown by what occurred in the New York City Post Office alone, where more than 28 million letters were screened, the exteriors of 2.7 million were photographed, and 214,820 letters were opened and read, mostly by random selection. Among the American groups and individuals placed on the watchlist for the project included:

The Federation of American Scientists; authors such as John Steinbeck and Edward Albee; the American Friends Service Committee; business, such as Praeger Publishers.

That, between 1967 and 1974, the CIA conducted Operation CHAOS, which began as an investigation abroad of any possible connection between anti-American foreign elements, on the one hand, and the peace movement in the United States, on the other. Soon, however, the investigation was spread so large as to engulf the lawful domestic activities of Americans protesting the Vietnam war. Before it finally ended, CHAOS had amassed some 10,000 intelligence files on American citizens and groups and indexed 300,000 names of Americans in CIA computer records, all without establishing the foreign connection for which it is presumably searched.

This is not to say that violation of the law within the United States was confined, during this long and lamentable period, to the CIA, nor even that its transgressions were the most egregious that occurred. The lesson to be drawn, rather, is that our law enforcement and intelligence agencies function in the most delicate of all realms, mandated to maintain order and security without impairing freedom. Yet these agencies have not been subjected to an examination half as thorough as that routinely accorded the nonsecretive bureaucracies which are far removed from the frontier of freedom. Our investigation revealed that the agencies which required the most scrutiny by the elected representatives of the people customarily received the least.

It is therefore prudent, in my view, to limit the CIA to the field of foreign intelligence, for which it was created, leaving domestic intelligence and counterintelligence activities to the FBI. In this, I agree with the argument recently advanced by Stansfield Turner former CIA Director, who wrote:

CIA officers are not trained to operate in the domestic environment, where regard for the law is a primary consideration. The ethic of intelligence is to get the job done in spite of local laws. It is unwise and unfair to force CIA operations in the domestic arena.

It isn't necessary either, for that is exactly where FBI officers are trained to operate . . . They have over many years proved themselves to be professionals at both counterintelligence and the gathering of positive intelligence. With more emphasis on the latter, they could cover whatever tasks the administration has in mind for the CIA.

If the newly proposed Executive order on intelligence activities is not modified in such a way as to retain the present constraints on CIA involvement in our domestic affairs, not only will the old frictions between the CIA and the FBI be rekindled, but the door will be thrown open again to the recompilation of CIA dossiers on hundreds of thousands of law-abiding American citizens.

Concerning this, the proposed order leaves little doubt. For example, the CIA may now collect only three types of information about U.S. persons inside the United States: One, information regarding commercial organizations or activities; two, information obtained from cooperative sources; and three, information regarding individuals about whom there is reason to believe they were acting on behalf of a foreign power.

Under the proposed order, these limitations are removed. There is no requirement that the individual about whom information is being collected be "reasonably believed to be acting on behalf of a foreign power," as the current order provides.

Other provisions in the proposed draft describe the investigative and information gathering techniques which can be used for this purpose. They include: Infiltration of domestic organizations, access to bank, medical, telephone and other private records, and recruitment and assignment of informants.

If we are capable of learning from experience, we should not expose the American people once again to such broad-based surveillance by an agency created for the purpose of spying on foreigners.

There is one other point I should like to make. After the Senate Select Committee on Intelligence completed its investigation in 1976, it seemed that Congress would implement most of its recommendations. Permanent committees were established in the House

and Senate to oversee the intelligence agencies and assess their performance. These two committees have so carefully guarded against leaks that Admiral Inman acknowledged last year that he was more comfortable disclosing highly classified information to the congressional committee than to the executive branch. As William Colby, former Director of the CIA, disclosed in his book, "Honorable Men," the Church committee's "basically responsible approach has been followed by a permanent Senate Select Committee on Intelligence which has demonstrated that effective congressional supervision can be accomplished while the essential secrets can be kept."

Then in 1978, the Foreign Intelligence Surveillance Act was passed, partially restricting the indiscriminate use of electronic eavesdropping. In 1980, the Classified Information Procedures Act was signed, establishing court procedures for the use of classified information in trials so as to avoid "graymail," the practice of defendants threatening to reveal information in open court, in the hope of escaping prosecution.

Finally, in fiscal year 1981, the passage of the Intelligence Authorization Act affirmed, by statute, Congress intelligence oversight authority, while confining it to the two permanent Intelligence Committees.

But here, Mr. Chairman, is where the progress stopped. One of the most important recommendations we made, in 1976, was for the enactment of comprehensive charters for both the CIA and the FBI, delineating their respective functions and defining the scope of their authority. Two attempts to pass such legislation in Congress have failed.

This is a misfortune, as it leaves the governing of our intelligence agencies, operating inside and outside the United States, entirely in the hands of the executive branch. With every election, the rules are changed, leaving the agencies to grapple with their new instructions, spreading a confusion on which is heaped a heady dose of politics, depending on the accusations made, and promises given, in the heat of the most recent Presidential campaign. Our civil liberties are too precious to be toyed with in this manner.

The Senate Select Committee which I chaired, concluded in its report that the absence of statutory charters contributed to the unlawful abuses of the intelligence agencies we uncovered, documented and disclosed. The report noted that:

While the 1947 National Security Act provided that the CIA shall have no "police, subpoena, law enforcement powers or internal security functions," the act was silent concerning whether the CIA was authorized to target Americans abroad or to gather intelligence in the United States on Americans or foreign nationals in connection with its foreign intelligence responsibilities * * *.

These crucial matters have been left to each President to define, often acting on the recommendations of the agencies concerned. Executive orders, some of which are classified, and all of which may be changed at the stroke of a pen, substitute for statutory law. This means that we also sacrifice the protection and enlightenment of democratic procedures—hearings, testimony and debate—which normally precede the enactment of our laws and lay a basis for sound public policy.

I hope this committee will voice its approval of this latest proposed Executive order on intelligence activities, as it is now written.

Two hundred years ago, Thomas Paine wrote of a principle that still holds true:

"Those who expect to reap the blessings of freedom, must like men, undergo the fatigue of supporting it."

Thank you very much.

Mr. EDWARDS. Thank you very much.

Senator CHURCH. Mr. Chairman, may I ask the committee's consent to include at this point in the record an editorial on the subject that appeared in the New York Times on November 9, 1981?

Mr. EDWARDS. Without objection, it will be included in the record.

[The article follows:]

[From the New York Times, Nov. 9, 1981]

LISTEN TO THE C.I.A. WATCHMEN

Point: The United States cannot be secure if our spies can't use their covert methods on the home front as well as abroad.

Counterpoint: We cannot be truly free if we let them ply their methods of infiltration, surveillance and manipulation on law-abiding citizens.

There are two issues embedded in this argument. One is where—where these competing interests should be balanced. The other, much more important, is how—the process of interplay between the C.I.A. and its Congressional overseers. The process makes the agency and the White House squirm, but it is the only hope for the wise use of intelligence. Therefore, when the Congressional monitors sound an alarm, it behooves the White House and the intelligence community to listen.

Congress can draw a line, as in 1947 when it created the C.I.A., against domestic spying. But that line requires constant policing. It is heartening to see that the watchmen are awake.

A bipartisan Senate Intelligence Committee, and the Democrats, at least, on the House counterpart, have sternly warned President Reagan against relaxing the curbs on domestic C.I.A. activity, as proposed in the latest draft of an executive order. Why, they ask, does the Administration want to stir up old anxieties, risk reviving the abuses Congress has documented and distract from the main task of improving foreign intelligence?

No one expects any Administration to love the idea of Congressional supervision—and this one certainly does not. Edwin Meese, the President's counselor, reviles criticism of the new order as propaganda from former staff members of "Frank Church's infamous intelligence committee that was so destructive of our intelligence authorities some years ago." Infamous? Destructive? The Church committee was the body that nailed the C.I.A. for collecting dossiers on thousands of law-abiding Americans. Its report helped bring some civilian control and Congressional oversight.

Mr. Meese also denies that the proposed executive order would make domestic spying easier. That denial is belied by every sentence and paragraph of the proposal. The Carter Administration's 1978 order prohibited infiltrating or trying to influence domestic groups; the Reagan order would permit them if the Attorney General approved. The Reagan version would subject American international businessmen to surveillance at home or abroad, not because they're dangerous but because they know things the C.I.A. wants to know.

The President has the raw power to sign this order despite the advice of the C.I.A.'s watchmen. But that kind of insularity only underscores the danger of an unchecked spy service turned inward. Mr. Reagan needs to join the watchmen in a process that can make Americans both secure and free.

Mr. EDWARDS. Thank you, Senator Church, for excellent, helpful testimony.

The gentleman from Wisconsin, Mr. Kastenmeier, is recognized.

Mr. KASTENMEIER. Thank you, Mr. Chairman. I want to compliment Senator Church on making the most important statement, I think, ever made, certainly to this committee, on the subject of intelligence. I want to also compliment him on the leadership he gave in the Congress for many, many years on this subject, and we are the poorer for his not still being there and still serving in that capacity.

I have one question, not really a technical question, but a political question, and that is, what is to be done? We have created an intelligence committee which perhaps serves well, but as you point out, these committees are so carefully guarded against leaks that Admiral Inman prefers them to the executive branch, in terms of guarding the information.

But that is a two-edged sword. The Executive order and the problems that are presented by it are internalized and seem to lack appropriate public way to reach the question. We can hope that this and other appropriate committees of the Congress can prevail in the sense of urging other actions than that which is proposed, but we may not be able to. Accordingly, I join in your analysis of recent history which, among other things concludes that it is unfortunate we were not able to get a comprehensive charter and so avoid the situation we are now in.

But my one question, Senator Church, is, other than voicing disapproval of this latest proposed Executive order, how might we or others in Congress proceed?

Senator CHURCH. Congressman Kastenmeier, under the present circumstances, the law in effect in this area is established by Executive fiat, a very unhealthy condition in a free government. I think that all the Congress can do is to try to point up to the Executive the dangers, the weaknesses, that it finds contained in the new proposed Executive order. Protests earlier this year resulted in the administration's withdrawal of the first and second proposed orders. We now have the third which seems to me to be a long step backward from the second.

So, we have seen a kind of dance downtown, one step forward, two steps back.

Perhaps through the hearings of this committee and through the objections that have been raised by the Senate Intelligence Committee and certain members of the House Intelligence Committee, the administration will reconsider the order and, I would hope, modify it.

But under present circumstances that's as much as Congress can hope to accomplish and it underscores, I should think the point I made as to the necessity one day for writing legislative charters.

As to the need to keep secrets, the Intelligence Committee record—the permanent committees in both Houses—has been excellent. As for my committee in 18 months of investigation of the most sensitive secrets in the country, we managed to maintain complete security. We didn't have a single leak that affected the national security.

Now the avoidance of leaks is, of course, proper and necessary. But procedures of law, the standard to be established by law governing these agencies, the delineation of one from another, the scope of authority intended to be conferred upon these agencies to

accomplish their objectives, which are legitimate and essential objectives in our time, all of this can be done by law. It can be done in open session. There's nothing secret about this part of the work. It can be done by committees accustomed to conducting public hearings and, when necessary going into executive session. And, as I say, it's a misfortune that the Congress has failed to establish by legislation charters governing the activities of both the FBI and the CIA, as we recommended 5 years ago.

Mr. KASTENMEIER. In that connection, it is your judgment that we must await another day, however, before pursuing a statutory charter?

Senator CHURCH. I would think you have to await the day when you have the votes to do it, and it is not likely that, having twice failed, this Congress would be more disposed to enact such legislation than its predecessors. The conscious feeling about the importance of preserving individual liberty in America seems to have taken a secondary seat to the demands for national security. It was that very attitude, so clearly evident today, that led to the gross abuse of human rights and the disregard of constitutional protections for our own citizens that occurred during the years cited in my testimony.

Mr. KASTENMEIER. Thank you.

Senator CHURCH. All of it was done under the rubric of national security.

Mr. EDWARDS. The gentlewoman from Colorado, Mrs. Schroeder.

Mrs. SCHROEDER. I want to join my colleagues in thanking you for your statement. I don't have any specific questions. I know as I look at this, I have great difficulty in dealing with the whole issue of domestic surveillance. When I ran for Congress in 1972—we didn't know this at the time—our house kept getting broken into, and it was really a rather terrorizing thing. We weren't sure if it was somebody trying to kidnap the children or what was going on. It was only much later, under the Freedom of Information Act, that I got my file and found out that the FBI had hired a young man named Timothy Redfern to do all of those terrible things. And the file was filed with wonderful things, such as a campaign button he had found, and mail that he had opened showing that I was a member of the League of Women Voters.

It was incredible. If he had walked into our campaign headquarters, we would have given him campaign buttons and given him stuff showing I belonged to the League of Women Voters and other such things. It was just ridiculous to think that all that had been carried out at that level of absurdity.

So, to see it moving over now to the CIA scares me. The common-sense approach to it makes me really wonder, because it seems to me we're not doing all that terrific a job in gathering intelligence internationally, and with additional budget cutbacks and personnel cutbacks and everything else, to say we are going to expand the area that the CIA can go into without even getting to all the other areas, makes you really wonder. You continue to read in the newspaper how we were surprised here and surprised there and surprised somewhere else, and it seems to me that if we're not doing such a good job, and that's their No. 1 mission, why in the world would you expand the mission?

Senator CHURCH. Well, on that commonsense basis, I agree with you completely. It's just another reason to try and do what we can to focus these agencies upon their principal missions. The principal mission of the CIA—indeed, the only reason it was ever created—was to collect, gather, and evaluate foreign intelligence. Even its so-called covert activities rest on a very dubious legal basis. But those activities, at least, are presumably to be conducted abroad. Now we have a proposed Executive order that would, indeed, permit these activities to be conducted by the CIA inside the United States.

I have the same feeling about the FBI. Its principal job, having to do with the enforcement of the law, having to do with organized crime in this country, has been diluted by the amount of energy, the number of personnel, the allocation of time given to collecting over-the-fence backyard gossip about every employee to be hired by the U.S. Government, regardless of whether or not the job is related in any way to national security.

It's little wonder that organized crime seems to survive so well.

Yes; let's keep these agencies focused as much as possible upon their major mission.

And let me just add, Mrs. Schroeder, that you are not alone in having been surveilled illegally. I have a letter of mine that I sent to my mother-in-law while I was visiting the Soviet Union. It was rather like "Dear Mom, Having an interesting time. Wish you were here." It was opened and photographed and made a part of the records of the CIA. When these agencies drift into such dragnet operations, it not only constitutes a threat to our liberties, but it dilutes the effectiveness with which they pursue their major missions.

Mrs. SCHROEDER. Well, I couldn't agree more, and in this time when we are constantly talking about budget cuts and efficiency, if all crimes in America were solved, and if our intelligence abroad was perfectly under control, and we knew everything that was going to happen, and so on, then we might decide whether we were going to do this. I would still be opposed to it, because of the reasons of freedom, and I do believe this is a government of laws and not men—and I mean all men—it's not just some men can run the government and others have to abide by the law. But we are just so far from it being there, it's rather like reading that the police force somewhere spends their afternoons going around collecting all dirty movies and watching them to decide whether or not they're too dirty, and meanwhile muggings and housebreakings and everything else are going on.

I understand why they might be more interested in looking at the dirty movies than going down trying to find criminals, but I think the American taxpayer really would like to see the main goal being focused on and that goal being reached, rather than inventing new goals.

I thank you again for being here and providing us with your wisdom and your experience. Thank you.

Senator CHURCH. Thank you so very much.

Mr. EDWARDS. I particularly appreciate your testimony, Senator Church, because the perception has been in the public mind in the last few weeks that there just might be a couple of things wrong or different about this draft order, that it changes things just a little

bit insofar as the CIA's involvement within the continental limits of the United States.

Your statement points out very well, I think, that this is a radical document and it makes massive changes in authorizations for activities by the CIA within the United States that would dramatically affect—or could affect—American citizens and other people living in the United States.

For example, let me take a couple of specifics. On the mail openings that you have mentioned in your statement, the current Executive order requires a warrant for opening mail in the U.S. postal channels.

Now, the draft deletes this requirement and elsewhere delegates authority to the Attorney General to approve warrantless use of investigative techniques otherwise requiring warrant.

How do we reconcile that provision—obviously, it has something to do with the opening of mail—so how do we reconcile that with the statement in the draft that “nothing in this order shall authorize any activity in violation of the Constitution or statutes of the United States”?

Does this, in your mind, suggest a reliance on some concept of inherent authority of the President or authority to conduct warrantless mail openings or other techniques?

Senator CHURCH. Presumably so, Mr. Chairman, because the contradiction is apparent. And I cannot see how the President may authorize, by Executive order, activities that are proscribed by the law, unless this is an implicit assertion of some inherent power that elevates the Presidency above the law.

I believe that's a very pernicious doctrine. I have always opposed it, and I would think that the Congress should vigorously oppose it.

Mr. EDWARDS. Thank you for pointing that out. It has always made members of this subcommittee uneasy, too—the inherent authority of the President to do whatever he feels he wants to do in those cases.

You also mentioned, in questioning by Mrs. Schroeder, physical surveillance of Americans traveling abroad. The standard now for physical surveillance for Americans traveling abroad is that to be put under surveillance by the CIA abroad, there has to be some evidence that the person is acting on behalf of a foreign power. That standard has been deleted. So we are left with no standard, I guess, under the draft order for physical surveillance of people when they are traveling. Does that disturb you?

Senator CHURCH. Well, Mr. Chairman, it does, of course, disturb me whenever this Government is authorized to spy on American citizens without a reasonable basis for suspecting that the targeted citizen is engaged in an illegal activity, that the suspect is breaking the law. As far as the CIA is concerned, since it is not supposed to be a law enforcement agency, its interest should be confined to whether that person is engaged as an agent of a foreign government.

Just to widen things up by throwing the doors open to indiscriminant surveillance of Americans, even if they're abroad, disturbs me. I think it's quite unnecessary, and it creates a temptation that may very well lead the agency into a repetition of the same abuses we discovered in the past. I hope not. I hope very much that both

the FBI and the CIA will voluntarily abide by the customary standards of the law, because the past experience we have had, the necessary exposure of past abuses constituted a traumatic period for these agencies.

But it's not enough to rely upon the agencies to discipline themselves, Mr. Chairman. Once the door is thrown open, and a kind of an enticement is created, then one ought not to be surprised if the agencies do not move through that open door once again. The temptation is very great to do it.

Mr. EDWARDS. Thank you.

Under the existing order, the CIA, within the United States, cannot make arrangements with the local police, only the FBI can do that, subject I'm sure, to supervision by the Attorney General. But that also has been deleted from this document. So presumably under this draft, if it is signed by the President—and we have no reason to think it's not going to be—the CIA could operate in this country by making arrangements with sheriffs and local police departments. Do you see problems there?

Senator CHURCH. I think this is a condition pregnant with problems. I don't know whether our memories are sufficiently long in this country so that we learn from experience. But there was a good reason for restricting the CIA in this regard. Its close cooperation with local police departments led to abuses in the past—serious abuses. The CIA has no business involving itself with local police. It was an agency established—let us not forget—to collect and to assess and to evaluate foreign intelligence. It was meant to operate abroad.

We have the FBI at home. And we have our hands full watching the FBI, to make certain that it does not transgress upon the liberties of the people.

We don't want a secret police developing in this country. And if one ever does, that day we start the countdown on our freedoms. And to have both the CIA and the FBI once more involved in internal activities of the kind you have described is foolish.

Mr. EDWARDS. Now, my last question, Senator Church, is that the draft order permits the CIA and the other intelligence agencies—and there are several—to infiltrate secretly domestic organizations and, in some cases, to influence their activities and policies.

Now, doesn't this provision run afoul of the National Security Act, which prohibits the CIA and the other intelligence organizations from performing any internal security function?

Senator CHURCH. Well, I would think so. Let me hasten to add here, Mr. Chairman, that in our committee investigations, the CIA was not the worst offender when it came to infiltration of the domestic groups in this country. It was the FBI that for years not only infiltrated groups, but undertook to influence the politics of America by internal harassment, by discrediting individuals involved in these groups through the spreading of false information concerning them in their own communities.

There were cases where the FBI engaged in vendettas, the most infamous being the vendetta against Dr. King, where he was regularly bugged and his telephone tapped wherever he went, where universities were contacted and told not to confer honorary degrees

upon him—even the Pope was contacted in an effort, which did not succeed, to prevent an audience between the Pope and Dr. King.

We saw transgressions that were quite unbelievable, that had nothing to do with the unlawful activity of any American citizen, but simply the disagreement of the Director of the FBI with their political positions, with their exercise of their rights as free citizens.

Now, I hope that all of this is over. As a result of the investigation, the Executive orders that followed helped to bring these agencies back into proper conformity with the laws of the country.

This proposal is a step backward which does these agencies no service, Mr. Chairman, if it tempts them back into those old abuses that discredited them before.

I have sensed that the public confidence in the FBI and the CIA has improved since the investigation because these Executive orders have forced the agencies back onto the proper path. So, we do neither ourselves nor the agencies a service by adopting this new proposal.

Mr. EDWARDS. The gentlewoman from Colorado.

Mrs. SCHROEDER. Thank you.

No questions.

Mr. EDWARDS. Ms. LeRoy.

Ms. LEROY. Senator, I'd like to pursue the chairman's question about the undisclosed participation provision in the proposed order. What possible justification for adding this authority to the CIA can you imagine or envision? For example, do you think it could be the result of some feeling that the FBI is not, in fact, doing an adequate job in this area?

Senator CHURCH. When the CIA and the FBI were both involved in domestic activities of this kind—the infiltration of the domestic groups and the like—it created very bad feeling between the two agencies, which is to be expected. And it's going to happen again if this order is not altered.

When the functions of the two agencies were separated, pursuant to the Executive order that followed the investigation, cooperation improved between the CIA and the FBI. Each knew its field and each was willing to cooperate with the other as long as the turf of the one was not trespassed upon by the other. That is human nature. And we learned, I think, from the experience that we will get better cooperation if we keep these two agencies working in different areas.

I see no need to raise the danger of that bad feeling being resurrected between the two agencies. The FBI can do its work, you know, and it consists of professionals fully as capable of handling their job as the CIA.

And indeed, within the United States, we ought to expect the FBI to handle its work with a greater consciousness of the importance of the law and the protection of individual rights than we have any right to expect of the CIA, because in its work overseas, it operates in utter disregard of the law. It is constantly involved in illegal activity in order to secure information abroad. If it were complying with the laws of the countries to which we send CIA agents, we'd be getting precious little intelligence. So, it is

trained—its people are trained to break the law and to engage in all kinds of covert and surreptitious activity.

Now, when you bring these people who are experts in breaking the law abroad and engaging in covert activities, which is just an antiseptic term covering blackmail and coercion and spreading misinformation—and even at times efforts to assassinate—all of which was uncovered in our investigation—when you bring people who are engaged in that kind of activity abroad home to begin spying on Americans, you invite trouble—serious trouble.

Ms. LEROY. One of the problems, I think, surrounding the whole evolution of Executive orders and Presidential directives having to do with intelligence has been the confusion about where the line is between internal security on the one hand and foreign intelligence or foreign counterintelligence on the other.

For example, you said in your statement—and the Church committee report also talks about the history of the National Security Act and the prohibition on the CIA performing any internal security function.

But I think both your testimony here today and the report indicate that in recent years—and this is a quote from the Church committee report, “The executive branch has interpreted foreign intelligence broadly to include intelligence programs the purpose of which is to determine foreign influence on dissident domestic groups.”

Where do you think the line is? And do you think that this order—not just with respect to the undisclosed participation section, but other parts of the order—do you think it crosses that line?

Senator CHURCH. I would leave the line where it is now drawn under the existing order. This is not to say that this line could not be improved upon with proper study, the proper hearings, the proper testimony done in the ordinary legislative way if the Congress were of a mind to rise to its responsibilities and pass a charter. But in the absence of that willingness, then I would leave the present line intact. This proposed new order stretches it in the wrong direction, in my view.

Ms. LEROY. Both the intelligence committees, as I’m sure you are aware, have recommended deleting the provision regarding undisclosed participation, that is, infiltration in domestic groups.

Assuming that the White House does accept this recommendation, does that allay your concerns about this order increasing CIA involvement in domestic intelligence?

Senator CHURCH. I’m not sure I understand your question. Would you mind repeating it?

Ms. LEROY. I’m sorry. I’ll rephrase the question.

Senator Goldwater and Congressman Boland have both recommended that the White House drop the infiltration section, the undisclosed participation section. Obviously, that section has been a major focus of criticism.

Assuming that the White House accepts the recommendation, does that allay all of your concerns about this order?

Senator CHURCH. No, indeed. I would hope that the White House might accept the recommendation. It would improve the proposed order if it were modified in that regard. But there are a number of changes that should be made in this proposed Executive order. The

one you have referred to is an important one, but it's by no means the only one.

Ms. LEROY. Thank you.

Mr. EDWARDS. The gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. No questions, Mr. Chairman.

Mr. EDWARDS. Does the gentleman from Illinois, Mr. Washington, desire time?

Mr. WASHINGTON. Just briefly, Mr. Chairman.

For the first time, I am honored to meet Senator Church. I gather, from the remarks, that you stress—I got this secondhand, unfortunately—you stress that the reluctance or the failure of this Congress to draft a charter which would circumscribe the parameters of the CIA. And you indicated certain ensuing difficulties which came about because of that—including this draft order we are talking about today.

I would be asking you to repeat, or rather expand upon the dangers which would come under the proposed order which we have before us?

Senator CHURCH. Yes, Congressman Washington. May I say I am very pleased to meet you, even in this formal way.

Mr. WASHINGTON. Thank you.

Senator CHURCH. The two principal arguments I have made today against the new proposed order have to do with the enlargement that this order would permit in the activities of the CIA inside the United States, broadening the surveillance of American citizens by the CIA, even though there may be no reasonable basis to believe that these citizens are engaged in any illegal activity.

The present Executive order confines the CIA in its investigation of Americans here at home to those who are reasonably suspected of being agents of a foreign power. I say leave the order alone. The CIA was created to conduct foreign intelligence, to spy on foreigners. And I think its authority should be confined to that area.

If we have in this country agents of a foreign power at work, then I have no objection to the CIA undertaking to place those people under surveillance. But if you go beyond that, then you are permitting the CIA to duplicate the work of the FBI when the law creating the CIA expressly forbids it from being a police agency or a law enforcement agency or being responsible for internal security or from having subpoena powers.

The Congress clearly did not want the CIA to involve itself in the internal law enforcement of this country. We didn't want to set it up like the Russians have set up the KGB, their spying agency abroad and which is their secret police for maintaining internal security within the Soviet Union. I would hope we would not pattern the scope of the CIA's activity on the Russian model.

The second point, Congressman, had to do with the importance of writing a charter which would describe the standards and the scope of authority for both agencies and make it a matter of law—statutory law—so it isn't changed after each election, depending upon promises made or accusations hurled in the heat of a Presidential campaign.

I think these agencies must either become very cynical every time the Executive orders are changed in the aftermath of an elec-

tion and adopt an air of "Oh well, this too will pass, let's not take it too seriously," or that they would operate in a state of continuous confusion because the rules get changed so often.

These agencies constantly operate in a climate of uncertainty. It would be far better if we had some basic law—better for the people, better for the agencies and their work, and better for the preservation of our constitutional system.

Mr. WASHINGTON. It's comforting to me in terms of my own judgment to discover a person of your vast experience in this field who agrees essentially with the position I took here in our last hearing. I indicated on a local level mandates for discretion of this sort have been abused terrifically in our fair city of Chicago, Ill., and that they had a dossier on me just observing me going to church and things of that nature. It is disturbing and frightening when a person of your experience points to the potential of possible manipulation of such a vital agency with a loose charter like the proposed one, which just opens the door to chaos, and I think that's the main thing that the American people should be apprised of.

Domestic surveillance may sound neutral to some people, but we have to have some real serious dialog about it.

Senator CHURCH. Nearly all the terms used in Washington are neutral terms. It's a fine art, obfuscation.

Mr. WASHINGTON. How long does it take to master the art? Two years?

Senator CHURCH. It takes awhile. You seem to be on to it already.

Mr. WASHINGTON. Thank you very much.

Mr. EDWARDS. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Senator Church, I listened with some puzzlement to your response to Congressman Washington's question. Do you really believe that this proposed Executive order would pattern the CIA like the Soviet KGB?

Senator CHURCH. Congressman, if you had listened carefully to what I said—

Mr. SENSENBRENNER. I thought I did.

Senator CHURCH. Well, may I repeat it?

Mr. SENSENBRENNER. Please.

Senator CHURCH. The KGB does conduct the spying activity of the Soviet Union in the world at large, and it also operates as the force that undertakes to promote internal security within the Soviet Union. In other words, it is like the CIA and the FBI combined. Now, to be sure, the KGB does not operate within the Soviet Union under the same restraints of law as our agencies do, and that is a great blessing for us. But the pattern of introducing the CIA into our internal affairs would be comparable to the pattern—the scope of the work of the KGB, though the methods—the restrictions on their activity would be very different.

Mr. SENSENBRENNER. I don't think anybody in this Congress, regardless of their philosophical bent, wants to establish an agency similar to the KGB, no matter what it's called. But I do think that any attempt to draw this proposed Executive order as a similarity between the KGB operation, represents an irresponsible description of what is being proposed.

Senator CHURCH. That's not my attempt nor intent, nor do I think that conclusion could be fairly drawn from a careful reading of my statement.

Mr. SENSENBRENNER. Well, I appreciate your clarification on that, and I would just add that it is within the power of Congress to pass charter legislation for both the CIA and the FBI, which would definitely supersede any Executive order the President of the United States could issue. Because of the controversy surrounding the various issues, Congress has chosen to do nothing and, in fact, by its inaction has turned the power of defining what the rules are for both of these agencies over to the executive branch. We considered the FBI charter in this subcommittee during the last Congress and reached no resolution. That happened as well in the Senate on the FBI charter, and it happened in both Houses of Congress on the CIA charter.

So, I think the answer to the concerns that you have expressed is to come up with some clearly defined ground rules for both agencies, called charter legislation, rather than picking upon Executive orders which can be changed or abolished by the stroke of a pen by whoever happens to be the President of the United States at the time.

Senator CHURCH. I think I agree with you. That doesn't mean that, in the absence of charter legislation, the Congress ought not to take a careful look at Executive orders and do what it can to recommend the changes it may believe to be prudent. But what needs to be done when there finally emerges the political will to do it, is the enactment of legislation, which, of course, will require the cooperation of the President.

He must sign bills into law, so it would be a cooperative effort on the part of the executive and legislative branches. Once done, we would have a set of laws, a set of standards, that would have a much more permanent status, enacted after the testimony of the best experts of the field, the best scholars, carefully considered in both bodies and debated publicly. And all this can be done, Congressman, without any impairment of secrecy. It can be done, and I hope the day will come when Congress undertakes to do it.

Mr. SENSENBRENNER. I would just reiterate my point that what has brought us together in this room is purely and simply the result of congressional inaction on charter legislation for both of these agencies. Had Congress acted, any Executive order or executive branch policies would simply have been implementing a law that was duly enacted pursuant to the Constitution.

Senator CHURCH. I agree with you.

Mr. SENSENBRENNER. I yield back my time.

Mr. EDWARDS. Mr. Boyd.

Mr. BOYD. Thank you. No questions.

Mr. EDWARDS. Well, I certainly agree with what both the witness and Mr. Sensenbrenner said about charters. This subcommittee worked very hard for a number of years in trying to draft a charter for the FBI. It's a very difficult subject, because there is wide disagreement as to what a charter should include, and there are a great number of people who want to include things in the charter that cause problems with the Constitution and the Bill of Rights. Actually, perhaps until that day when we can have wide agree-

ment on what the charter should include for the FBI, perhaps we are better off with the basic charter that we have, which is the Constitution and the Bill of Rights.

I know that if this order that we are talking about in this hearing was signed by the President tomorrow in its present form, I know that a number of lawsuits would be filed, and it would be tested as to its constitutionality, because clearly there are a number of provisions that seriously intrude on the Bill of Rights and due process, and so forth.

Senator CHURCH. Mr. Chairman, I thank you for that observation, and let me just say in brief response, you're quite right that the fundamental guarantee of our liberty is in the Constitution, and if the Congress exercises its surveillance over the law enforcement agencies in a proper way, and if the courts remain independent in this country, then we do have ultimate recourse to the Constitution. The problem in the 1960's and the 1970's was that the abuses, the unlawful practices, the transgressions that occurred, were happening without the knowledge of the Congress, and there was no opportunity for people to challenge these practices in the courts, until we had discovered what was going on with the investigation I conducted and with the other investigations that were undertaken at the time.

Mr. EDWARDS. The gentleman from Illinois?

Mr. WASHINGTON. Let me belabor this point just a bit. Senator Church, I was also one of those who was listening to this comparison to the KGB in terms of a possibility or probability. And I want to pin down my so-called philosophy. And the reason I do is that it seems to me we're saying the same thing. The core of the problem is that it is probably dangerous to give excessive discretion to the Chief Executive—any Chief Executive—in the area of civil liberties or in the area where civil liberties might even remotely be in serious danger.

Senator CHURCH. Yes; I think it is, because the orders can be so quickly changed and because of the problem of knowing what is going on. I think it was Congressman Kastenmeier who said, even with the intelligence communities, they must operate within the cloak of secrecy to such a degree that it's difficult for them to apprise the Congress in a satisfactory way. So, this is a dilemma.

But we have been wise in separating the two, rather than creating one agency to enforce the law at home and to operate abroad. We have given the primary responsibility for internal law enforcement, insofar as the Federal Government is concerned, to the FBI, and we have given responsibility for the collection of foreign intelligence to the CIA. I think that's a healthy separation and it ought to be preserved and not blurred, but clearly preserved. It's one of the weaknesses of this Executive order that it blurs that distinction.

Mr. WASHINGTON. Thank you. I yield, Mr. Chairman.

Mr. EDWARDS. Thank you very much, Senator Church. You have made an immense contribution to a very important American dialog. We appreciate your coming.

Senator CHURCH. Thank you.

Mr. EDWARDS. We will plan to have another hearing next week about the same time.

[Whereupon, at 10:55 a.m., the hearing was adjourned.]

EXECUTIVE ORDER ON INTELLIGENCE ACTIVITIES

TUESDAY, DECEMBER 15, 1981

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 9:40 a.m., in room 2241, of the Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Kastenmeier, Schroeder, Washington, Hyde, Sensenbrenner, and Lungren.

Staff present: Catherine A. LeRoy, chief counsel; and Thomas M. Boyd, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

I recognize the gentleman from Wisconsin, Mr. Kastenmeier.

Mr. KASTENMEIER. Thank you, Mr. Chairman. I ask unanimous consent the committee permit the meeting this morning to be covered in whole or in part by television broadcast, radio broadcast and/or still photography, pursuant to rule 5 of the committee rules.

Mr. EDWARDS. Is there objection?

[No response.]

Mr. EDWARDS. The Chair hears none. So ordered.

This morning the Subcommittee on Civil and Constitutional Rights continues its hearings on the Executive order on intelligence activities, which has been the subject of two previous subcommittee meetings. The order was signed by the President approximately 10 days ago. At this point it is unlikely that any further revision will be forthcoming, nor in the current political climate is legislation likely. Therefore, I feel it is important to continue public hearings on the order and on related matters to let the public know what the intelligence community has in store for us; to let the public know just what this new order means, at least in those areas which fall within the legitimate responsibility of this subcommittee.

As a primary congressional overseer of the FBI and the Justice Department, we must examine any change in the role and responsibilities of those agencies. A strongly held judgment by Congress for many years is that the FBI is responsible within the United States for internal security and counterespionage. The FBI, its budget and personnel are public. Its intelligence investigations are subject to the constraints of the Levi guidelines—promulgated by a

Republican administration—which required that Americans cannot be investigated without strong indications of criminal conduct.

This subcommittee views with concern an Executive order that licenses another Federal agency to invade the turf of the FBI, especially an agency whose budget is secret, whose personnel is secret, and which operates worldwide, clandestinely and whose activities within the United States have been found by congressional committees to be improper, and on occasion, outside of the law.

Before I introduce our first witness, Admiral Turner, I yield for any statements to be made by any members. Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman. I take it we are not going to discuss any classified information today; otherwise, we would have difficulty with five television cameras and reporters, et cetera. So, we are going to go into this matter of intelligence—the CIA—but we are not going to talk about any classified material; I think that somewhat cripples us.

Mr. Chairman, I take exception to this hearing and the one which preceded it 2 weeks ago. The Executive order signed by the President on December 4 was the product of long and heated consultation with two congressional select committees on intelligence which were created for the express purpose of overseeing classified materials and their impact on our intelligence capabilities. The chairman of the House Select Committee, Congressman Edward P. Boland of Massachusetts, has indicated that he is gratified that the administration coordinated with the House committee, and though he is troubled by certain portions of the order, he intends to exercise close oversight to guard against any possible excesses.

As a matter of fact, he is quoted in the Washington Post of December 5 as saying, and I quote, "The next few years as the new order is implemented and interpreted will be important ones for the oversight committees. If we do our job properly, we will be in a position to assure the American people that their rights are being safeguarded."

I hope, Mr. Chairman, we will have an opportunity to have Congressman Boland testify. Senator Daniel Moynihan, acting chairman of the Senate Intelligence Committee, indicated that the order is a fair one. Similarly, Senator Barry Goldwater, chairman of the Senate committee, has stated his support as well; so has Congressman Bob McClory of our committee, who is also a member of the House Select Committee on Intelligence. Why, then, are we holding these hearings?

The stated purpose is the impact which the new order may have on the FBI's counterintelligence functions. I suggest the focus is misdirected. The FBI counterintelligence function, like that of the CIA, is funded through the national foreign intelligence budget authority of the select intelligence committees of the House and Senate. It's not funded by Justice, which is the Department over which this committee has jurisdictional responsibility. That argument aside, we are just not equipped to conduct hearings on an order which must be justified, if at all, by classified materials and classified operations.

The Senate and House select committees were created in 1976 and 1977 respectively, for the express purpose of insuring the integrity of classified information. Our previous experience with the

committee chaired by former Congressman Otis Pike, at which time classified information was leaked to the press daily, had a great deal to do with the creation of the select committees of the House and Senate. I suggest, Mr. Chairman, that if you are determined to pursue this issue—an issue which has already been resolved to the satisfaction of the House and Senate Select Committees on Intelligence—that you request Chairman Boland to hold a private meeting with the membership of this subcommittee. At that time we can express our concern and learn his understanding of the need for the changes this order has brought about in intelligence operations as they were previously conducted under our former President Jimmy Carter.

In my judgment, this is the most responsible way to find out why this order was necessary and why the Carter proposal was ineffective. Public hearings with members of the former administration, whose pride of authorship is threatened by the issuance of this new document, does little good in maintaining the integrity of our intelligence operations and the confidence of the executive branch in our ability to review such materials responsibly.

Thank you, Mr. Chairman.

Mr. EDWARDS. Mr. Kastenmeier

Mr. KASTENMEIER. Thank you, Mr. Chairman.

Well, I have no other comment, Mr. Chairman, other than to congratulate you for holding this hearing. Quite to the contrary of what the gentleman from Illinois has said, I think it is not only important but necessary. While we do have select committees on intelligence, they are by their very nature under such constraints that their public discussions of the policy implications of some the changes frankly are not adequate. This committee has other responsibilities and it should get on about its business. And I think we have a distinguished list of witnesses this morning, and I am anxious to hear from them.

Thank you, Mr. Chairman.

Mr. EDWARDS. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you, Mr. Chairman.

I would like to follow up on what Congressman Hyde has said. As you know, for 25 years following the creation of the CIA by the National Security Act of 1947, the intelligence community was virtually outside the appropriations oversight process of Congress. No committee, permanent or otherwise, had exclusive jurisdiction over intelligence. A number of committees exercised oversight and appropriations responsibility, though none were officially organized, as are the House and Senate Select Committees on Intelligence today.

Since abuses of the agency were discovered during the 1970's and the Pike, Rockefeller and Church committees were organized, statutory oversight and budget responsibility became necessary. Senate Resolution 400 and House Resolution 658 created the House and Senate permanent Select Committees on Intelligence with specific responsibility for overseeing our country's intelligence community. Both committees have complete and adequate storage facilities, secure hearing rooms, a guard force and security personnel appropriate for the handling and the storage of sensitive information. We do not.

I believe it is absolutely critical that any issue of this kind be discussed in such a forum and that hearings designed to create a public spectacle are counterproductive and largely ineffective. The oversight committees have the responsibility and have been involved in the drafting of the Executive order which is the subject of this hearing. As late as a year ago, the Congress recognized the fact that intelligence information is indeed sensitive and needs special protection, when it amended the Hughes-Ryan amendment to limit the dissemination of covert action information to the two committees—the two permanent Select Committees on Intelligence.

Once again, the 1974 version, which was amended, required the dissemination of confidential and classified information to aid committees and over 200 Members of the House and Senate. This hearing format today is patently unfair. Many of the reasons for the promulgation of the Executive order signed by President Reagan 10 days ago are classified. So, even if this subcommittee could and should consider those reasons, it must do so in executive session so that classified information would not be divulged. That means that the format of the hearing being held today, as set by the chairman of this subcommittee, insures that one side of this issue, and only one side, is ventilated and spread upon the public press. That is hardly the evenhanded manner of presenting issues that this subcommittee has previously taken pride in.

The suggestion by Congressman Hyde that the subcommittee request Chairman Edward Boland of the permanent House Select Committee on Intelligence to hold a hearing where the members of this subcommittee could participate under the House rules is a very sound one. That way the members of the subcommittee would get the balanced viewpoint on why this Executive order was drafted and signed the way that it is, rather than having a one-sided presentation that the subcommittee has been engaged in, not only today but in our two previous hearings on the subject.

Thank you.

Mr. EDWARDS. The gentlewoman from Colorado, Mrs. Schroeder. Mrs. SCHROEDER. Thank you, Mr. Chairman.

Well, Mr. Chairman, I have a little trouble trying to decide who is making this into a spectacle. As far as I'm concerned, what we are doing here is proper and I congratulate the chairman. Obviously, coming from California has tainted his view of the world. He does believe that government is not a fungus and that it can thrive in the sunshine.

I think there is a very important distinction here and we have made it on the Armed Services Committee. This is what we are talking about: Intelligence normally deals with international things, and yes, that belongs in the intelligence committee and that's very important. But today we are talking about domestic intelligence. This country has not had a pleasant experience with that in the past, and I think the Justice Department and we who are very concerned about civil and constitutional rights properly should talk about this in this committee. So, I congratulate the chairman.

I think this is a government of laws and not of men, and I think if there are reasons that we have to engage in all sorts of undercov-

er spying against our own citizens, they have a right to hear about that in public.

Mr. EDWARDS. Thank you.

Mr. Lungren.

Mr. LUNGREN. Thank you, Mr. Chairman.

Mr. Chairman, I agree wholeheartedly with the comments of my colleagues Mr. Sensenbrenner and Mr. Hyde. I don't think the question here is whether government ought to be in the sunshine; the question is whether the oversight responsibility of the Congress is best conducted in an open hearing where only a partial recitation of the facts which led up to the subject matter under discussion can be considered. This Congress, prior to the time I served, did not have a very good record with respect to two things: No. 1, oversight responsibilities concerning intelligence gathering; and No. 2, when it embarked upon that duty, in terms of keeping quiet about classified information. Therefore, shortly before I was privileged to serve in this Congress, a decision was made by the Congress that it would give that responsibility to one specific oversight committee in the House and one specific oversight committee in the Senate.

I would suggest, if the members of this committee are not satisfied with our ability to reach these questions, they ought to attempt to get on those committees, or we should make a formal request of that committee to have joint participation in closed hearings so that we might ferret out the truth.

I do not want any of my remarks to in any way suggest a criticism of those who are appearing before us. They have been requested to appear before a committee and they have responded. But I do think that the manner in which this committee is acting is inappropriate. We must keep in mind that from the beginning, Congress has been kept informed about the progress of this Executive order. It's important to note, I think, that the Executive nature of the order does not require that the House and the Senate Select Committees on Intelligence be involved in any way; nonetheless, they were. President Reagan did this out of respect for both bodies, and I think it is inappropriate for us to indirectly condemn that which both the House and the Senate committees have supported.

I just wonder whether our pursuing this open hearing at this time is a suggestion that somehow we believe that Chairman Boland and his committee are—to use his words—not doing their job properly. If that is the complaint of this subcommittee, we ought to say so openly, not hold a hearing which is in many ways duplicates what's already been done. And even worse than that, it seems to me only a partial explanation or exposition of the question.

It seems to me we have a very high degree of responsibility to our constituents and to this Nation in questioning the intelligence gathering mechanisms of our Government. I believe further that it ill-serves us in that pursuit to have a hearing such as this when I have not received any information about any request from the subcommittee to have consultations with those committees which are given oversight responsibility by the Congress.

If we want to change that mechanism we ought to say so and we ought to go about changing it, but we ought not to do it in such a helter-skelter fashion.

Mr. EDWARDS. Thank you.

The gentleman from Illinois, Mr. Washington.

Mr. WASHINGTON. Thank you, Mr. Chairman.

Mr. Chairman, once again, I commend you for holding these hearings, and once again I am going to make it clear that I support the lawful intelligence functions of the Federal Government. But the tendency toward and the history of abuse which has resulted from improperly drawn, overbroad grants of discretion is something that should not be overlooked by this committee. To ignore it is irresponsible, both on the part of this Congress as well as the executive branch.

I feel we do a grave disservice to the people of this country and to our democratic institutions and to the intelligence agencies themselves when we allow such sweeping delegations to occur, especially when fundamental liberties and the integrity of our processes are at issue. I fear that in this Executive order, we have already passed an important watershed in the erosion of individual freedom, and I am somewhat alarmed that any President is allowed by fiat to overturn the prohibitions against domestic spying by the CIA.

I stress "fiat," because there has been no legislation. This is generally understood to be contrary to what was intended by Congress when the National Security Act was passed in 1947. Where does it all end?

I think, Mr. Chairman, you should be commended for raising the question and having these hearings, and I look forward to the testimony with gusto and verve and hope.

Once again, thank you, Mr. Chairman.

Mr. KASTENMEIER. Will the gentleman from Illinois yield?

Mr. WASHINGTON. Yes.

Mr. KASTENMEIER. I would like to make this further comment.

The Judiciary Committee has always jurisdiction with reference to intelligence. In 1978, I headed the Judiciary Committee delegation in the conference committee with the Intelligence Committees of both the House and Senate, and we produced the Foreign Intelligence Surveillance Act of 1978, which I thought was landmark legislation. This committee—the Judiciary Committee—has always residual jurisdiction in this field.

We, of course, do not oversee the day-to-day operations of the intelligence community. That properly belongs in the Intelligence Committee. But when matters take place of overriding policy concern, which involve civil liberties, constitutional rights, this committee does have a responsibility, and as I have said before, Mr. Chairman, I commend the committee for exercising that responsibility.

Mr. EDWARDS. Thank you. We will move along.

Before we do, I do want to point out for the record that all of the FBI's budget, including the intelligence portions, are subject to the authorization of this committee and also that we are not dealing with classified documents this morning. This order is published in the Federal Register. The reason it is published in the Federal Reg-

ister is so there will be public consumption and discussion about it. Our hearing this morning is part of that public discussion.

We will now introduce and welcome our first witness, Adm. Stansfield Turner. In addition to his distinguished naval career, Admiral Turner served as Director of the Central Intelligence Agency from 1977 through 1981. He presided over the agency while Executive Order 12036 was in effect, and thus has a first-hand working knowledge of the order, its positive and negative sides.

Admiral, we welcome you. Before you proceed, let me say the subcommittee has also invited representatives of the Justice Department as well as Mr. Kenneth C. Bass III, former counsel to the Attorney General for Intelligence Policy, to testify here today.

Both the Justice Department and Mr. Bass have agreed to testify, and they will be testifying within a few days, we hope.

Now we welcome you, and you may proceed.

TESTIMONY OF ADM. STANSFIELD TURNER, FORMER DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY

Admiral TURNER. Thank you, Mr. Chairman.

What I would like to do is start by outlining both what I consider to be the good and the less good points of the new Executive order, hopefully briefly, and then be here to elaborate in those areas that are of greatest interest to the committee.

To start with the good, I believe that it's a very fine Executive order in the sense of clearly wanting to improve our intelligence capabilities. That is the intent behind the changes. There's a very positive tone to the Executive order that makes it clear that it is designed to improve our intelligence capabilities.

One particular additional point that's good in it that has not been in the previous Executive orders is that it emphasizes the importance of having competitive interpretation of intelligence—competitive analysis. That's not new; it's something that's been done. But I think it's a good thing for the Executive order to emphasize, as it does.

On the other side of the ledger, there are three categories of problems that concern me. First is the opening of Pandora's box with respect to the enhanced opportunities of the intelligence communities to intrude into the private lives of American citizens.

The second is the elimination of controls on sensitive intelligence operations to collect intelligence, not to do covert action which is governed by the Hughes-Ryan amendment.

Third, there is a dilution of the process of oversight by the Congress, the media, and the public in this order.

Let me start first with the question of intrusions into the lives of Americans. There are four areas of concern to me.

The first is the permission granted to the intelligence agencies to conduct intelligence operations inside the United States for the purpose of gaining significant intelligence.

Second is the removal of the ban on opening mail of U.S. citizens.

Third is a broadening of the authority to conduct surveillance against Americans living abroad.

And fourth, there is the permission to conduct covert actions inside the United States.

All of these contravene the basic principle which I believe should govern a secret intelligence activity in a democratic society such as ours: the principle of minimizing the opportunities for the intelligence agencies to intrude into the private lives of citizens.

The first reason behind this principle is simply that we don't want our intelligence organizations to undermine the very basic principles, the very basic constitutional rights, which they have been created to defend, at least unless it is very important for the country to obtain information.

I would suggest, Mr. Chairman, that from my 4 years of experience, we do not forego significant opportunities to gain intelligence because of the restrictions on not intruding into the lives of Americans. A year ago this month, I asked the leading officials in the Central Intelligence Agency to submit to the general counsel a list of those types of activities that they thought we might undertake were we to have no restriction with respect to intruding into lives of Americans. With one exception, which concerned counterespionage abroad, I found that none of the list that they submitted appeared to have any significant gain if we should pursue them.

On top of that, as has been suggested in some of your comments already, we have the Federal Bureau of Investigation to go get the kind of information that resides in the American public's domain, if it is considered important.

Mr. Chairman, I know that the primary focus of this committee is on the constitutional rights and freedoms of Americans with respect to intelligence. I would like to suggest that I have the second and perhaps even deeper concern with the permission granted in this Executive order to intrude into the lives of Americans. I believe it poses risks to our intelligence capabilities. I believe it will weaken our intelligence structure rather than strengthen it as intended, first because it will strain the relationship between the CIA and the FBI.

As you are aware, that has not always been a good one. It is a very good one today. Let me add, however, we do not want to do anything that would jeopardize that. We don't want them to be competitive, to duplicate. We want to encourage them to share their information with each other, to share their expertise, and to work as a team. And I can assure you, it is my very strong belief, Mr. Chairman, that unless those two agencies are working most closely together, the security of our country is in jeopardy.

Second, there is a risk to an intelligence capabilities from intrusion into the lives of Americans because of the possibility that mistakes will be made and unwarranted or illegal intrusions will be made. We know that occurred in the past. It is my personal opinion it's been much exaggerated, but there were instances of illegal or improper intrusions. I would suggest that the greatest threat to American intelligence since World War II was the period from 1975 to about 1979 when there was such intense public criticism of our intelligence activities. That threatened to undermine and to do serious damage to the long-term intelligence capabilities of our country.

I am not suggesting that criticism may not have been warranted, but I am saying it was extremely damaging. I believe the President's Executive order, in opening up the lives of Americans to intelligence agencies more, risks repetition of that.

Why? Because Central Intelligence Agency officers are not trained to operate within the law inside the United States. FBI officers, when given a new assignment ask, "What are the limitations of law the limit what I can do to accomplish my objective?" The Central Intelligence Agency officer, accustomed to working overseas, has an innate reaction, "How do I get the job done?"

I don't believe we want to start training Central Intelligence Agency officers in the intricacies of American law any more than is absolutely necessary. They are already burdened with a great many legal issues with respect to Americans overseas. I think that has to be accepted. But you can only train a person in so many things at a time. If you take lots of time to train them in what the FBI must be trained for, you are going to detract from their training to do their basic problem in the overseas environment.

Because the Central Intelligence Agency is not geared to this, you are doing them a disservice if you force them into the position of having to make difficult choices based upon American law. In so doing you run a risk they will make a mistake. We will have another series of investigations and scandals, and we will do very serious and permanent damage to that fine organization—the CIA.

Let me move quickly to my second area of concern, Mr. Chairman—the elimination of controls over operations to collect intelligence.

Both of the previous Executive orders required that the Director of Central Intelligence clear sensitive collection operations. I emphasize, again I'm not talking about covert actions where you are trying to influence events in foreign countries. I'm simply talking about collecting information, but in situations where, if we are compromised, if we don't do the job right and are caught, it could do serious damage to the foreign relations of this country.

Under the previous orders, the Director of Central Intelligence was required to clear those sensitive operations with the National Security Council. I believe it is deleted from this order in the expectation that that will free up the Director of Central Intelligence to be more daring, to be more aggressive, and to get better intelligence. I admire that objective, but we should recall that until the first Executive order by President Ford in February 1976, there were very few checks on intelligence. It was very free. Some hare-brained schemes that were carried out that had very little potential of gaining useful information for this country.

One of them which I had to wrestle with and clean up very early in my tenure, was the administration of drugs to unwitting Americans. This was done under circumstances in which, while the purpose was good, there was no hope that there would be any useful evidence. If you took a man off the street with no data base as to what his physical characteristics were, there is no way you can get any useful information by administering a drug to him and finding out what the end result was. You have to have a data base to start with, and they did not. And that did severe damage to our intelligence organizations.

I believe that the present order, by not requiring sensitive operations for collecting intelligence be cleared through the National Security Council, in fact weakens the hand of the Director of Central Intelligence. If that seems odd, but let me explain.

The head of any agency works under considerable pressure from his constituency, his bureaucracy. He must, of course, support them if he's going to be their leader.

Now the most difficult task of the Director of Central Intelligence, I believe, is to sort out from those proposals that come to him from his bureaucracy, those which are worthy of carrying out in order to collect intelligence and those which are not.

He must on the one hand encourage and stimulate new, innovative, risky, harebrained schemes for collecting intelligence. If you keep on doing intelligence the same way year after year, decade after decade, you're not going to be very good. Times change; countermeasures are developed to your techniques.

On the other hand, if he approves real harebrained schemes like administering drugs to Americans unwittingly without a data base, he is subjecting the agency to very serious and damaging criticism over the long run.

Now having to report and clear with the National Security Council sensitive operations gives the Director of Central Intelligence extra strength when dealing with his own bureaucracy. He can say to them, "How will that sell down at the White House." It also, Mr. Chairman, is a good requirement for the Director himself to be required to think through that proposition and be able to articulate it so that he can persuade his peers in the National Security Council to go along with it.

Now clearly there is risk. If the National Security Council is timid he will be turned down on important operations that he would like to have done and which this order is, I think, pointed toward encouraging. But I would suggest to you, sir, that it just is a matter of the Director marshalling his arguments well and logically. He should be able to prevail, but if he has problems, he has direct access to the President of the United States and can appeal any adverse ruling by the National Security Council.

I found it useful, and I found it made me think these proposals through carefully to insure that I could present them logically. I never had a problem of being turned down after I had made the arguments. Sometimes they were protracted, and sometimes there were delays, but they always came along as requested.

In addition, the old Executive orders required that these sensitive operations be reviewed by the National Security Council on an annual basis. That is also a very useful mechanism to strengthen the hand of the Director of Central Intelligence. He wants to be sure that he knows what is being done of a sensitive nature within his organization. And I'm not talking about maliciousness. I'm talking about differences of judgment as to what is sensitive and what is not.

What we used to do is, I would present to the National Security Council a list of x items that I considered sensitive that we had done in the past year. The Council very wisely said, "Now, Turner, you put on the bottom of that list the next 10 most sensitive items that you didn't consider warranted being cleared with the National

Security Council, because they were not that sensitive." Thus, they could get a sense of my judgment. If they thought things below the line were more sensitive than some above, they could call me to task and say, "You should have brought this one to us."

That was very helpful in many ways. One of the ways it was helpful is that it insured that nobody in the Central Intelligence Agency was making a judgment that something was insensitive when it, in fact, belonged way up on the top of this list. I have a sense of confidence that since they knew they were breaking a Presidential order that required me to report a sensitive operation to the National Security Council, that I was going to have full visibility of all of the sensitive operations, that there was not going to be a difference of judgment here.

Lastly, Mr. Chairman, let me talk about oversight. There are two problems that I believe the new Executive order creates: The first is the way the order was coordinated with the Congress. You have already discussed that some, and I would like to give you a different view. Second, there is an omission in the new Executive order. President Ford's Executive order required the Director of Central Intelligence to be the spokesman for the intelligence community with the Congress. President Carter's required he be a spokesman with the Congress, the media, and the public.

Now the omission in this order does not mean that the Director will not be forthcoming with the Congress, that he won't act as a spokesman, but he does not have that authority over the other elements of the intelligence community. What bothers me is that I believe it indicates a lessened interest, a lessened sense of responsibility to share with Congress, to keep the intelligence committees of the Congress fully posted. I think that has behind it an assumption that oversight by the Congress is somehow inhibiting to our intelligence process. I don't happen to believe so. In fact, I happen to believe that the existence of two oversight committees strengthens the hand of the Director of Central Intelligence.

First, it strengthens his hand within his own organization. It helps to insure that all of the other agencies, as well as his own agency—the Central Intelligence Agency—are keeping him informed of what they are doing. No subordinate is going to want to have something come out in testimony before an intelligence committee that he hasn't informed his boss about. So, it is a very useful tool to strengthen the hand of the Director and to insure that he is well informed of what is going on throughout the whole intelligence community.

Second, Mr. Chairman, the interchanges between all the members of the intelligence community and the committees of the Congress are very helpful in keeping intelligence officers from becoming too isolated from the mainstream of American thinking, from not understanding what the country wants from its intelligence agencies, what it will tolerate and what it will not.

I mentioned that I thought the way the new Executive order was coordinated with the Congress weakens the oversight process. Why? Because each of the four versions of this bill, I believe, were sent to the two intelligence committees for coordination. Now I believe that the responsibility of the executive branch of the Government is to manage the agencies and departments of the Govern-

ment. An Executive order issued by the President is one tool for doing that. I believe the Constitution says the responsibilities of the legislative branch of the Government are to pass laws, to appropriate money, for the Senate to advise and consent on certain appointments and to impeach, but not to manage, not to tell the Executive how to manage its departments.

And I think 535 people trying to tell somebody how to manage can only lead to the proverbial confusion by committee. Besides, the processes of the Congress are not tailored to managing. They are tailored to legislating and appropriating. I don't believe the White House should have sent this to the Congress. I believe they were abdicating Presidential authority in so doing. I don't believe the Congress should have commented through its two intelligence committees. The Congress of the United States is almost co-opted now by this action of these two committees or by a few people on those committees. There have been no hearings, which is a normal process for the Congress to air its views.

You, as members of this committee, did not have the opportunity to go and to testify before the Intelligence Committee as to your view with respect to the rights of Americans. They decided that on their own, I believe. If I were in your shoes, I would be offended that you have not had an opportunity to make your voice heard on this important Executive order.

Now as I say again, I don't think it should have been up here at all. But I don't think, had it come up here, Congress should have grappled with it. What the Congress should have done, and I respectfully suggest to you where I believe the Congress is remiss, Mr. Chairman, is to have passed a charter for the intelligence community before the Executive order was signed. A charter would set the bounds within which the President could write his Executive order.

We have the cart before the horse. In short, we have struggled for several years to get a charter for the intelligence community. It didn't move for a number of reasons. Some of the responsibility was mine and others in the Carter administration not moving rapidly enough. Some of the responsibility was the Congress for not seizing the problem aggressively enough. We do not have legislative direction from the Congress of the United States for the intelligence activities of our country today that is at all adequate.

The act of 1947 is out of date. It describes an intelligence activity that you cannot recognize, if you look at what we have in being. We need to update that.

So, in conclusion, Mr. Chairman, let me say I believe that only congressional action can rectify the present situation that we have found ourselves in. The Congress after due hearings, after public hearings on the issue of how much we want the intelligence communities to be allowed to intrude into the lives of Americans can pass a law that places certain limits on that type of intrusion. I believe the Congress can make some rectification with respect to controls on the sensitive collection operations by making clear to the Executive that it wants those operations carefully controlled.

I don't think the Congress can tell the Executive what kind of checks and balances to run. That's his job in managing. But I think you can make it clear through your intelligence community that

you want to be informed on an annual basis of what is going on. I think the charters for the intelligence community can make it clear that the whole Congress expects the two intelligence communities to be very active in overseeing the process of intelligence. But I also think they should encourage all of the committees of the Congress to insist upon receiving good, clear intelligence estimates from the intelligence community.

There are very few committees that do not have concerns for which intelligence is applicable, classified or unclassified. I think new charters could take care of the problem of covert action in the United States by prohibiting that and by replacing the outdated Hughes-Ryan amendment. Its definition of covert action is terribly restrictive on the intelligence community today.

And if there is one place to help improve our intelligence—as the intent of this Executive order is—here is one that I would suggest is important. In addition, I think the authority of the Director of Central Intelligence needs to be reviewed. Probably only the Congress can set it straight, because there is too much rivalry within the intelligence community to do so from the executive branch side.

These, sir, in my opinion, are the ways to go about strengthening our intelligence activities. I admire the intent of the new Executive order, but I think it is seriously flawed and will, over time, end up weakening those capabilities, much to our country's detriment.

Mr. EDWARDS. The gentleman from Wisconsin, Mr. Kastenmeier.

Mr. KASTENMEIER. Thank you, Mr. Chairman. I would like to compliment Admiral Turner on his clear and compelling testimony on the subject. But I do want to understand, Admiral Turner, what you have said. You said, in conclusion, that we should have under the best case possible proceeded with a charter and that Congress failed in that connection, but, that normally an Executive order with or without a charter shouldn't have been submitted to the Congress by the President. The charter itself having been enacted, an Executive order should follow that. But we're in a situation where that's not now possible, and the Executive order has been promulgated.

To the extent that the Executive order appears to override domestic statutory law, is it therefore authorized? For example, you mention, among other problems, mail openings and other requirements of domestic law. There are also, as you know, very stringent wire tapping and other types of limitations in terms of applications pursuant to domestic law. Does the Executive order in those respects override statutory law governing those practices?

Admiral TURNER. Not in my opinion, sir. I think if there were a conflict, it would have to be resolved in the courts. And I don't know of any conflict with the law in any of the three Executive orders.

Mr. KASTENMEIER. You suggested four areas which in terms of intrusion in domestic privacy, there may be increased surveillance. There might be mail openings, Americans living abroad would be subject to a level of scrutiny, and there might be domestic covert action. What does the latter category include—domestic covert action?

Admiral TURNER. Well, covert action is not really intelligence. It is an effort to influence events or attitudes of a foreign country without the source of the influence being identified as the United States. It's only carried out thus far by the Central Intelligence Agency in our country's history. What is provided for toward the very end of this new Executive order—paragraph 34B—is that covert action, defined in the terms of this Executive order as special activities which can be carried out in the United States, if necessary.

Now this is not to influence Americans. This is to influence foreigners, but foreigners who may happen to be in the United States. I don't think—I'm sorry, let me leave it there.

Mr. KASTENMEIER. But might this involve otherwise illegal action?

Admiral TURNER. Well, in all of these you run the risk of transcending the law accidentally through enthusiasm, through overzealousness to get the job done. I don't believe those people in the Central Intelligence Agency who committed the errors of the past did so with any maliciousness, or so forth. I think they were really dedicated Americans trying to get the job done, and that is my concern here, because that's the ethic of the Central Intelligence Agency, and I want to keep that ethic, and not an ethic of looking into a statute book every time you turn out and carry out your duties.

Mr. KASTENMEIER. My last question is this: You mentioned that the National Security Council would not necessarily be informed of prospective operations or programs of the Central Intelligence Agency. Why would the National Security Council not want to be informed? Is there any reason that they wouldn't insist upon being informed, certainly, of any major activity contemplated?

Admiral TURNER. Well, to begin with, let me say I don't know how this administration is operating, and it may well have that requirement without it being in the order. That is, I know of nothing to prevent that. I suspect it was deleted from this order on the impression that one less hurdle to clear, one less impediment to doing sensitive operations, was going to help intelligence.

I'm saying, as I did in my prepared remarks, sir, that I think that is an erroneous conclusion about the way intelligence operates in our bureaucracy, in our democratic society. I think it weakens rather than strengthens it.

Mr. KASTENMEIER. I generally agree with your conclusions, and I thank you. Thank you, Mr. Chairman.

Mr. EDWARDS. Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

Admiral, when you became Director of the Central Intelligence Agency, I am informed that you wanted to place all intelligence capability under a Cabinet-level department headed by yourself. Is that true?

Admiral TURNER. No.

Mr. HYDE. That is not true?

Admiral TURNER. You have been reading the newspaper, sir.

Mr. HYDE. The newspaper reported you wrong on that? Are you satisfied with two Select Committees on Intelligence with Republicans and Democrats on them in the House and the Senate? Do you

think that's adequate oversight of the intelligence activities of the CIA?

Admiral TURNER. Yes; I do. I am very strongly supportive of having those two committees. Originally I was in favor of a joint committee. I have changed my mind since then. I think those committees are preferable. I think the only danger is that they not go back into the distant past when they said to themselves, "We don't want to know what you're doing, you know, it's too dangerous; it's too sensitive." There have to be very careful controls on the degree of details and so on, but the committees have generally been very good with keeping secrets.

Mr. HYDE. So, you are satisfied that the two select committees in the House and the Senate are adequate to provide effective oversight over the activities of the CIA; is that correct?

Admiral TURNER. Yes.

Mr. HYDE. All right. Now what do we need this committee for? What do we need 535 Members, I believe you said, getting in on the action, especially when we're dealing with sensitive, classified information? Why don't we just have trust and confidence, as you have just expressed, in the two select committees?

Senator Moynihan is competent, as is Senator Leahy; Bob McClory is competent; Ed Boland—we have good people, intelligent people, patriotic people on those committees. Why don't we just trust their judgment instead of getting into the nuances of an Executive order ourselves, especially if the justification involves classified material which we are not going to go into here?

Don't you think we are plowing the sea?

Admiral TURNER. Mr. Hyde, I'm here because I was asked to be here, not because—

Mr. HYDE. I know. I want your opinion if you're satisfied with those two committees—and you're a professional in this field—shouldn't we be satisfied with them?

Admiral TURNER. Mr. Hyde, this is an unclassified order that the President has issued. It clearly raises questions in the American public as to what it means, what its effect is going to be on them, what its effect is going to be on intelligence capabilities.

I believe the whole ethic of our Government is to be as open as possible.

Mr. HYDE. On intelligence matters which involve classified material? How can you be open on matters that are supposed to be confidential? How do you reconcile that?

Admiral TURNER. Mr. Hyde, I respectfully suggest to you that I have not said anything classified this morning.

Mr. HYDE. No; but to justify this order, I'm told—and I'm not a member of those committees—that classified information was discussed. Is that your information?

Admiral TURNER. I don't have access to classified information today.

Mr. HYDE. Neither do we.

Admiral TURNER. Well, you do if you want it.

Mr. HYDE. Not today.

Admiral TURNER. Let me respectfully suggest, sir, that I believe the discussion I conducted with you this morning was useful, or I wouldn't have done it, I wouldn't be here. It was all conducted on

an unclassified basis, and I believe it helps elucidate to the American public one side of this problem.

There certainly are other people who have different views, I think the American public is justifiably concerned about this order. I think they are entitled to understand it as well as they can, and they cannot have access to classified information.

Mr. HYDE. In other words, we criticize what the administration is doing, but the justification is behind closed doors, and that's fair? We don't rely on the Select Senate Intelligence Committee, the Select House Intelligence Committee. We publicly criticize what is being done, and then there is no response because, of course, the reasons for the change are classified.

Does that rub you the wrong way? Does that strike you as being fair to the American people?

Admiral TURNER. I can't imagine that if the Director of Central Intelligence were sitting next to me, that he could not argue all the points that I have made without getting into classified information.

Mr. HYDE. Well, again, we do backdoor those two Intelligence Committees, then, don't we? We proceed with an ongoing dialog on this, and we don't trust their judgment.

Admiral TURNER. You do, the media do, the American public do, and I think that's good.

Mr. HYDE. I do, too. I think it's great to destroy the confidence of the American people in our intelligence-gathering facilities.

Incidentally, Admiral, I was in Tehran in November before the February abdication of the Shah, and I had the opportunity to speak to some of the CIA people present there in our Embassy, which a few short months later was to be such a historic place. We asked them what was happening. Was the Shah going to be able to ride this out? Was there going to be a revolution?

Either they didn't know, or they didn't tell us the truth. They said everything was under control.

Now if the Carter restrictions on the CIA had not been in place, do you think they might have had better information?

Admiral TURNER. To begin with, the restrictions you're talking about have two characteristics. One is that they are Ford restrictions reissued by President Carter, changed very little. Second, with one exception, there were no restrictions in any of these three Executive orders that affected collecting information in Tehran, collecting information overseas, and so on.

They affect intrusions into the lives of Americans. The only regulation in here that affects what you do overseas to non-Americans is the prohibition on assassination.

Mr. HYDE. The Rosenbergs were Americans, weren't they?

Admiral TURNER. Yes.

Mr. HYDE. Being an American citizen does not mean you are not capable of espionage and sabotage; isn't that correct?

Admiral TURNER. That's correct.

Mr. HYDE. My time is up, but I will get another round, I hope.

Mr. EDWARDS. The gentlewoman from Colorado, Mrs. Schroeder.

Mrs. SCHROEDER. Again, I would like to underline some of the things we've been talking about this morning. I think what you're saying—and I want to make sure I'm fairly characterizing this—is,

you think the two Intelligence Committees are doing a very good job of overseeing what the CIA does.

Admiral TURNER. Yes.

Mrs. SCHROEDER. And this oversight involves the details of what kind of operations they have and what they're doing and how much money they need and that type of thing. These types of things, I think we all agree, should be classified.

But then the issue in front of this committee today is how do they go out and gather that information and who can they surveil and so forth; in other words, we're talking about the rules. We're not talking about undercover intelligence operations or revealing who is in the field or anything like that.

We're talking about the general rules and how they fit under the Constitution and so forth, which is a lot different than what the oversight committees do, I think.

Admiral TURNER. Well, let me give Mr. Hyde his due. When you consider whether you want to have these restrictions or not on intruding into the lives of Americans, part of my argument was that, based on my classified information of 4 years, I did not see many opportunities that we had to eschew because of these rules that were of value.

Now that's something I can't discuss in detail. I'll certainly grant you that.

I also made a comment that a year ago I made a survey on the kinds of things which we might do, and nothing looked very valuable to me. You cannot in this forum press me to explain that any further, because I'd get into classified information. So, you have a valid point.

I think our democratic process is such, though, that you certainly should be calling somebody else up here to give you that same kind of judgment from a different point of view. And then you and the American public have got to look and say, "I think you know this fellow has credibility, and that fellow doesn't," and that's the best you can do in this difficult circumstance.

Reconciling secrecy to an open society is a very difficult process.

Mrs. SCHROEDER. With the benefits come the burdens, and I think that's one of the things that's made this society work as well as it has. People trust we will have these kinds of hearings and we will be looking at the new rules under the Constitution. I think you have made a tremendous contribution, because from your vantage point, which was certainly a lot closer than any of us or even any one of us on the oversight committee, you can evaluate the Executive orders possibly better than a lot of us.

I really want to thank you for coming over here. I'm sure it was not the most pleasant experience, but I want to thank you for being here and for helping the committee look at that overall view.

Mr. EDWARDS. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you, Mr. Chairman.

Admiral Turner, both in your statement this morning and in a Washington Post article which appeared on December 9, you stated that before you left office, you undertook to list certain clandestine operations which might be undertaken if there were no restrictions on intelligence gathering. You have indicated that one of these items was worthwhile.

Would you describe to us in what way it would have been worthwhile?

Admiral TURNER. Yes; I believe the previous Executive order made it too difficult to conduct surveillance of an American overseas suspected of espionage. And I believe that espionage is both more probable with Americans overseas, and it is a very dangerous thing to this country. Therefore, I believe in loosening the controls, giving the intelligence agencies a little more freedom than the way it was under my time. I practically had to swear that the man was an agent of a foreign country before I could investigate and find out whether he was. I think there should be a slight relaxation of that wording. That was the only proposal that had merit, in my opinion, where the risks were worth the benefits or the benefits were worth the risks.

Mr. SENSENBRENNER. It's my understanding that the Reagan order takes that restriction of the Carter procedure out. Do you support that part of the Reagan order?

Admiral TURNER. I think it goes too far. It lets you conduct physical surveillance of Americans abroad just to get any significant intelligence. The old order limited it to espionage, narcotics, and terrorism.

But within that and probably less within the order than the implementing directive of the Attorney General to get to the espionage one, you had to prove too much in order to get permission to do a physical surveillance.

I think we should still limit overseas to those three categories and not to significant intelligence as we have in the new order.

Mr. SENSENBRENNER. How could you really know that an American who is overseas is engaged in espionage without first going a couple of preliminary steps which would fall under the definition of "significant intelligence" which then might lead you to the fact that the American was engaged in espionage for a foreign power overseas?

Admiral TURNER. No; what I am suggesting, Mr. Sensenbrenner, is that you simply need to permit the Director of Central Intelligence, when he has some clue that this person might be involved in espionage, to proceed and explore that until he determines it's not espionage. It's something entirely different.

But you should not start just on a presumption that he is an American overseas. You must have a clue that it is espionage, narcotics, or terrorism.

Mr. SENSENBRENNER. My time is limited. I don't want to pursue this. I think we're splitting hairs over exactly what the definition is.

But I would like to pose a hypothetical to you which is somewhat current and a matter of grave concern and public comment.

Under the Carter order, if a CIA agent were seated next to a group of Libyan nationals or American citizens who sympathized with Libya and overheard them discussing their intent to coordinate with a Libyan hit squad, would a CIA agent be able to report that information without their consent?

Admiral TURNER. I believe what the agency would have to be limited to there—and I have to really read this and check—it would be to report to the FBI that they had that information and

then turn it over to the FBI to handle rather than keep it in their own record and pursue that situation themselves.

Mr. SENSENBRENNER. What happens if it gets lost in the shuffle, and the CIA agent had an order to report directly to his superior in the CIA, and then attempted to gather more information about what those individuals are doing?

Admiral TURNER. If these are so-called U.S. persons, they could not. If they are not defined by the Naturalization Service as U.S. persons, then they could. I think there is something in the new order that loosens that definition. I should have commented that in the beginning I think we have overly protected foreign people who come in here, for 2 weeks for instance.

Mr. SENSENBRENNER. I have one other very brief question. If a member of that same group of Libyan nationals or American citizens who were Libyan sympathizers volunteered to approach a CIA agent with information about a pending assassination, the Carter order would have precluded his being directed by the CIA to find out more information. Is that correct?

Admiral TURNER. I suspect so. I suspect—again, I really have to check each one of these specifically—that you would have to hold that man in abeyance and turn him over to the FBI as rapidly as you can.

Mr. SENSENBRENNER. I hope I have a second chance to ask questions.

Thank you, Mr. Chairman.

Mr. EDWARDS. The gentleman from Illinois, Mr. Washington.

Mr. WASHINGTON. Admiral, one of the problem areas you raised was the potential intrusion into privacy in terms of domestic intelligence. I gather you were trying to compare the different mind sets that have formed that of a foreign intelligence officer as compared to the domestic intelligence officer.

The question that arises in my mind is, where would these domestic intelligence officers come from? Where would they be trained? Who would train them? Would they be people who have overseas experience?

I am somewhat at a loss as to just how a core of domestic intelligence officers, pursuant to this order, would be marshalled and used.

Admiral TURNER. I think that reflects my basic concern, Mr. Washington, that you almost virtually would have to train all of your CIA officers to collect intelligence by human contact in the legal procedures for doing it in the United States, because you would be rotating them back and forth between overseas and here.

You know, out there, theoretically you could give the man training just before he came back to do that assignment. There may be some way to minimize the number of people who have to have that training. But you can't have one group who live overseas all their lives and one group who live in the United States all their lives. They have to rotate back and forth.

So, therefore, I am concerned, if you dilute the training for the CIA officer by forcing him to take on this additional chore.

Mr. WASHINGTON. Over and above that, isn't there a grave possibility that in the whole area of domestic intelligence, it might be abused for certain purposes, particularly in an election year. In

massive demonstrations, for example, someone in intelligence might assume the demonstrators should be surveilled? Isn't there tremendous danger of that?

Admiral TURNER. No; I don't believe there is. I may be naive. I have been a dedicated public service officer, or was, for 35 years, and neither in the military nor in intelligence did I ever find anybody wanting to use his official position for domestic political purposes.

Mr. Washington, I do suggest that under the present Executive order and circumstances, the American public will have the concern that you have voiced. And what I am saying is, I don't think it would come to pass.

Mr. WASHINGTON. And justifiably so, in light of what happened to Martin Luther King and what happened to Miss Jean Seberg. There are other cases of which you would perhaps know better than I.

In light of these instances, certainly the person would be very justified and very fearful of this whole domestic intelligence gathering.

Admiral TURNER. Yes; those, of course, were on the law enforcement side, not the intelligence side. And what I am saying is, when you get amateurs into that, you have even a greater risk when they're doing law enforcement, that they will have that kind of excess.

Mr. WASHINGTON. But there is always such a danger that such a core would be manipulated. That is a serious danger. Would you put that among the top problems—lack of confidence people might have in this kind of operation?

Admiral TURNER. Yes; I think it is a serious problem because, as I have emphasized several times, retaining the American public's confidence in our intelligence activities, that they're doing what we want them to do and doing it well but not doing what we do not want them to do, is very important, particularly after this criticism that we had. It's very important to maintain what I believe is a sense of confidence that the public has shown in our intelligence agencies in the last several years.

Mr. WASHINGTON. Thank you, Mr. Chairman.

Mr. EDWARDS. Admiral Turner, the hypothetical question posed by my colleague from Wisconsin, Mr. Sensenbrenner, had to do with information within the United States wherein it would get to the proper authorities of the U.S. Government.

In the hypothetical, the FBI would have the primary jurisdiction, and the CIA would turn over the information to the FBI; is that correct?

Admiral TURNER. That is correct.

Mr. EDWARDS. This subcommittee has a lot to do with the FBI, on an almost daily basis. It's generally our opinion they do a sound job in counterespionage and internal security in the United States where it has primary responsibility.

Would you not agree that the FBI does a good job here in the United States in this area?

Admiral TURNER. Absolutely. And under Director Webster the ties between the CIA and the FBI have been greatly strengthened. In past times, there was great reluctance to share information

about agents, one agency or the other was working. We now have a specific organization for doing that, so that we have a mechanism for sharing that information that never existed before. There's no reason not to continue to put pressure on the FBI to provide that service to the CIA when it's needed and vice versa.

When you are talking about counterespionage overseas, you don't want to authorize the FBI to do counterespionage overseas. That's the CIA's territory.

Mr. EDWARDS. Do you think the Attorney General should have a role in deciding what investigative techniques should be used in investigations within the United States?

Admiral TURNER. Yes.

Mr. EDWARDS. Do you think that the new order just signed by the President changes the balance that now exists between the Attorney General and the CIA in those areas of investigation within the United States?

Admiral TURNER. I don't think so. But you see, that really comes to the implementing directives that come out from this.

Let me say this. I think a fine reading of this new Executive order, I believe, correctly puts a greater balance between the Director of Central Intelligence and the Attorney General. I think the Attorney General had a little too much authority in the way it was done in the previous Executive order, and it was inhibiting.

I really believe the problem I was discussing with Mr. Sensenbrenner of counterespionage overseas revolved much more around the Attorney General's implementing directives in restraining my ability to conduct physical surveillance unless I really was absolutely positive the man was a spy.

So, I think the present Executive order makes some forward steps there.

Mr. EDWARDS. Thank you.

Admiral Turner, you mentioned mail openings. The previous order required a warrant for opening mail in the U.S. postal channels. The new order signed by President Reagan deletes this requirement and elsewhere delegates authority to the Attorney General to approve warrantless use of investigating techniques otherwise requiring them.

How do you reconcile that provision with the statement in the order that "nothing in the order shall authorize any activity in violation of the Constitution or statutes of the United States"? Would you explain a little more what you meant by mail openings in your testimony?

Admiral TURNER. Mr. Chairman, I am just concerned at the elimination of the prohibition on it. From the two previous Executive orders, it's my opinion that we did not gain significant intelligence from opening mail in the past, that we endangered our status with the American public, and that the prospects of gaining significant intelligence in the future by that technique certainly does not warrant the risks or the damage that it can do.

The fact that it is not prohibited in this order does not mean they are going to do it. Surely there will, I hope, be some internal controls. But I believe it would be nicer and particularly reassuring to the American public to see it there. And the lack of its being there makes one nervous that there will be some attempt to start

that again. And as I say, I never saw any evidence that it produced significant information.

Mr. EDWARDS. Thank you. My time has expired.

The gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

Mr. LUNGREN. I haven't had a turn yet.

Mr. EDWARDS. I'm sorry.

Mr. LUNGREN. I know it's very difficult for you to find me over here on the far left, but occasionally I find myself over here.

Admiral, referring back to the scenario outlined by Mr. Sensenbrenner. Under the present order, wouldn't you run into severe difficulty if the individual who would volunteer to come forward to the CIA operative indicated that he did not wish to be handed over to the FBI—in fact, he had confidence in the CIA operative. And obviously being at a very severe disadvantage, being privy to information about an assassination plot, not necessarily trusting this information to get that far out—wouldn't that be a severe handicap under the present Executive order?

Admiral TURNER. No problem at all.

Mr. LUNGREN. What happens?

Admiral TURNER. You do one of two things. You would send in an FBI officer and label him to the foreigner as CIA. You know, you don't have to be honest in this game we're playing.

Second, there is a provision—

Mr. LUNGREN. So, you get around it by not telling the truth?

Admiral TURNER. If he comes to me and he says, "I won't talk to an FBI officer, but I will talk to a CIA officer", I'll say, "Wait a minute, I'll get the right fellow for you. I'm not the right chap." And I'd bring in an FBI officer and say, "Here's my buddy from Department X of CIA."

Mr. LUNGREN. If he happens to be close at hand and the fellow is still around.

Admiral TURNER. That's right. There is the risk of delay in this. And I don't want to try to deny that. We try to measure benefits and risks, and there are losses to be had through the restrictions in the old Executive order, and I don't want to say that there were not.

Second, there were provisions under the old plan that the FBI could use a CIA person on detail. In effect, the FBI runs the operation.

If the Libyan, or whoever it is, has particular confidence in Joe, who is labeled CIA, and he isn't going to talk to even Bill in the CIA, we could work that out under the old system. We could get permission to loan Joe to the FBI, but it would be an FBI operation under their control. The CIA would not be going off doing it in competition separately.

Mr. LUNGREN. I don't want to suggest that I would support the CIA doing it in competition with the FBI, but what you're outlining represents practical means which we can employ to get around the present Executive order if necessary, aren't you?

Admiral TURNER. Almost, in a sense. But it's very important that the directing authority under those circumstances is the FBI. I mean, that avoids competition. You see what I mean? And they

won't be stumbling over each other in back alleys because neither one has told the other we're working the same agent and so on.

There are very practical problems here.

Mr. LUNGREN. I understand the relationship between the Attorney General and the Director of the CIA under the present order is somewhat skewed toward the Attorney General, and the new order would somewhat establish a balance more to your liking. Is that correct?

Admiral TURNER. Yes.

Mr. LUNGREN. Would that go for domestic intelligence as well as foreign, or are you restricting that to foreign intelligence gathering outside the United States?

Admiral TURNER. Well, I was thinking of it in terms of foreign intelligence gathering. And since it was prohibited in the past order, there were Attorney General's orders that inhibited the CIA about collecting intelligence in the United States. It was done in the Executive order, I believe.

Mr. LUNGREN. Under the present order, the CIA may conduct counterintelligence activities within the United States in coordination with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General. The major distinction here is that you have a commonality of interest by the two individuals—the Director of the CIA and the Attorney General—as opposed to having the Attorney General be the sole determining individual; is that not correct?

Admiral TURNER. I like that. Now I am biased, because I was Director of Central Intelligence. But clearly I think there is a cause for a balance there.

What you're really saying then is, you're forcing more possibility of the decision having to go to the President if there are real differences here instead of leaving the Attorney General the upper hand.

Mr. LUNGREN. Just one last question. You referred, as one of the major criticisms you had of this order, to an apparent lack of control, that there is no longer the reporting requirement, by the Director of Central Intelligence to the National Security Council.

But I recall that you also made the statement that, quote, "They always came around as requested." Do you really think it's going to make much difference?

It sounds as though you were describing the experience of using the National Security Council as a soundingboard, and there's still nothing to prevent that. All this says is that it will not be required in the future, at least pursuant to the Executive order.

Does that make a difference, to quote you, if they always came around as you requested anyway?

Admiral TURNER. Yes; it makes a big difference. I can't tell you how many times before I brought them around I had to tell my own bureaucracy, you know:

What you have proposed and what you're asking me go down and sell will not sell. Now let's get back to the drawing board and really develop this thing in a much more sensible, much more persuasive way.

And I think the proposal that went down to the NSC improved as a result of that kind of scrutiny, rather than diminished.

Mr. LUNGREN. Doesn't that really depend on the structure of the White House?

What may have been appropriate for one administration with respect to the way it organized its overall international relations mechanism may not be appropriate for another one. And I think we ought to view it in the context of the administration that is going to utilize it and not just argue as to how all administrations are organized in a similar fashion.

Admiral TURNER. The National Security Council technically is the President, the Secretary of State, the Secretary of Defense, and the Vice President. And my clearance was with the Secretary of State and the Secretary of Defense. I worked that through the National Security Council Advisor.

I don't think it makes much difference whether that man's role is important or unimportant, in a particular administration. The point is to be assured the Secretary of Defense and the Secretary of State, particularly the latter, are advised of and on board with the risks that you are taking. Are they worth it to the country? A lot of the benefit is possibly going to go to either one of these two. And on the Secretary of State's shoulders largely goes the responsibility, if you blow the operation and have a hoedown with some country.

Mr. LUNGREN. Thank you.

Mr. EDWARDS. Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

Well, I don't want to intrude any more on Admiral. Turner's time. I just want to say that I think he has been an excellent public servant.

I think he undertook one of the most difficult, if not the most difficult job in America, trying to run a covert, clandestine operation in the sunlight, with everyone looking over his shoulder and pointing the finger. I think that's very difficult.

But I just want to say this. I think your notion of what disturbs the American people and the notion of my colleagues on the Democratic side differs vastly from my notion of what disturbs them. I think Americans have been very concerned about what they perceive to be ineptitude in our overall intelligence ability.

The Weathermen group really made us a laughing stock. I'm speaking of our intelligence, and not the CIA. But they got tired of hiding out. They turned themselves in out of boredom. We didn't track them down. We didn't find them.

Their conduct was serious. We are talking about people who made bombs and wanted to blow people and buildings up and destroy institutions.

Maybe it would be nice to have better cooperation between our intelligence agencies and not so much concern about what letters follow somebody's paycheck—FBI, CIA, DEA, or the Coast and Geodesic Survey—I don't think the taxpayers care. But I do think they want to be protected. They know the world today is a dangerous place and it's getting worse every day.

We don't have the Baader-Meinhof gang over here yet. We've got the FALN. We've got a lot of people in this hotel lobby we call "America" who aren't concerned about the niceties of law. That

doesn't mean we should have intelligence agencies violating the privacy and the constitutional rights of American citizens.

But it means there's a balance to be found. I am content, as one citizen, to trust in the system we have set up, which is responsible to two congressional committees—not 14, not the Appropriations Committee or the Judiciary Committee, of which I am a proud member.

I will trust Ed Boland, I'll trust Senator Moynihan, and I'll trust Barry Goldwater and Bob McClory. I don't want to know a lot of information simply because it's classified. The more people that know it, the least secure our intelligence operation is.

If I were a foreign source of intelligence, I'd be very concerned about confining information to the CIA because all this sunshine might reveal my identity. And I'm in the potato sack at the bottom of the Danube River.

So, I am satisfied we have good people exercising good oversight.

Senator Moynihan—if I don't agree with much that he says or does—said that this order, and I quote, “makes it clear that the mission of the CIA is broad.” He added that only a very few provisions of the order, and I quote, “if misinterpreted, or stretched beyond the legitimate intent of their authors, could pose some problems.”

I'll accept that. I'll trust those two committees. I hope the American public is reassured that a lot of good people are concerned about improving, within the framework of our Constitution, our intelligence activities.

I thank you.

Admiral TURNER. Thank you.

Just to respond, Mr. Chairman, could I just respond very quickly?

Mr. EDWARDS. Yes.

Admiral TURNER. I appreciate what you have said, and I thank you for your support for the intelligence activities of our country. I can't take exception with anything you said, sir.

My coming on differently as to specific provisions here is also based on the fact that there is very little, in my opinion, to be gained. I want as good intelligence as you. I think there are risks, from the point of view of the public support and acceptance of intelligence, that will continue on into the future—and many of them, because they are hyped up and exaggerated, whereas the bulk of the American people wouldn't care about some of these intrusions.

But the bulk of the American people don't always control my friends in the fourth estate over here and I just don't see a lot of positive intelligence flowing from these intrusions in American lives. And I may be, you know, overestimating that, but that happens to be my opinion.

I appreciate your support.

Mr. EDWARDS. Mr. Sensenbrenner.

Mr. SENSENBRENNER. I have no further questions, Mr. Chairman.

I would like to commend Admiral Turner for having a very good statement, delineating what some of the issues are. I recognize a lot of the arguments in support of the Reagan administration are

based upon classified materials. So there is no way it can be feasibly possible to get the whole story out on the record.

I yield back my time.

Mr. EDWARDS. Mr. Lungren.

Mr. LUNGREN. I thank you, Mr. Chairman.

I just would like to join everyone in thanking the admiral for appearing. Our criticism of this meeting, as expressed, was certainly not directed toward any of those who have been asked to testify and have agreed to testify.

I think it's interesting and informative to see that, after a rather a broad gage criticism of the Executive order, Admiral Turner has suggested there are some things he agrees with and some things he disagrees with in the new order.

And I thank you for appearing.

Thank you, Mr. Chairman.

Mr. EDWARDS. I do want to thank the admiral for a very valuable testimony.

And I think—and I wonder if you agree with this final statement I might make: That a free society is a bit risky, but it's worth it.

Admiral TURNER. Certainly. Yes, sir.

Mr. EDWARDS. Thank you very much. We appreciate your testimony.

TESTIMONY OF JOHN SHATTUCK, EXECUTIVE DIRECTOR, WASHINGTON, ACLU; AND MORTON HALPERIN, DIRECTOR, CENTER FOR NATIONAL SECURITY STUDIES

Mr. EDWARDS. Our last witnesses are familiar faces who have been actively involved in the debate over intelligence policy for many years.

We welcome John Shattuck, executive director of the Washington ACLU, and Morton Halperin, the Director of the Center for National Security Studies.

Gentlemen, we welcome you. Without objection, your statement will be made a part of the record. And you may proceed.

[The complete statement follows:]

PREPARED STATEMENT OF JOHN H. F. SHATTUCK, JERRY J. BERMAN AND MORTON H. HALPERIN

Mr. Chairman and members of the subcommittee, we are pleased to appear before you on an issue of overriding importance to the future of basic civil and constitutional rights in the United States. The American Civil Liberties Union is a nationwide, non-partisan organization of more than 250,000 members devoted to protecting fundamental freedoms guaranteed by our Constitution.

The Executive Order on Intelligence Activities (E.O. 12333) signed by President Reagan on December 8, represents a grave threat to civil liberties. Against an overwhelming record of civil liberties abuses by the CIA, the FBI, the NSA and other intelligence agencies, exhaustively documented by responsible committees on both the House and the Senate,¹ President Reagan's executive order represents an exercise in Orwellian doublespeak. While the Order asserts that its "procedures shall protect constitutional and other legal rights," the procedures in E.O. 12333 authorize a wide-range assault on civil liberties. In this respect it is similar to the executive orders which have governed the activities of American intelligence agencies since 1976, when President Ford issued E.O. 11905.

¹ See the Final Reports of the Church and Pike Committees and the Rockefeller Commission Report.

The Reagan order goes beyond the Carter and Ford executive orders and expands the already expansive executive assertion of authority to conduct intelligence activities. Before describing this expansion, however, we would like to summarize the common dangers that all three orders pose to civil liberties:

1. Intrusive surveillance of Americans both at home and abroad, using such techniques as physical surveillance, informants, confidential third party records and pretext interviews is permitted in many circumstances even though they are neither suspected of breaking the law nor of acting on behalf of a foreign power.

2. The Orders permit the infiltration of domestic political organizations in a wide variety of circumstances.

3. The Orders permit the Attorney General to authorize secret searches of homes and other physical searches, including opening first class mail in the United States as well as electronic surveillance and physical searches abroad without a judicial warrant or a finding of probable cause that the individual is engaged in illegal activity.

4. The Orders are to be implemented by agency regulations which may be kept secret. Moreover, the Order itself may be altered by the President without prior debate or any explanation of the newly asserted powers.

5. The Orders contain no standards for the conduct of surveillance by the FBI (except for the use of Fourth Amendment techniques). These are left to Attorney General guidelines, which are secret.

6. The Orders permit the CIA to operate within the United States and to conduct surveillance of Americans.

But the Reagan Order goes even further. The key changes relate to CIA foreign intelligence investigations at home, CIA physical surveillance of Americans abroad, CIA covert operations at home, opening of mail in the United States, and cooperation with local law enforcement agencies. We discuss them in turn.

FOREIGN INTELLIGENCE COLLECTION IN THE UNITED STATES

Neither the Carter nor the Reagan Order establish any standard limiting the collection of foreign intelligence information abroad or counterintelligence information at home or abroad. Thus, except for limits on the use of specific techniques, both orders permit the CIA to clandestinely gather information from unwitting Americans in the United States as well as abroad in the course of a lawful foreign intelligence investigation, and inside the U.S. in the course of a lawful counterintelligence or counterterrorist investigation. Each order establishes a standard for CIA foreign intelligence investigations. The standard of the Reagan Order permits an expansion of that surveillance and raises serious concerns.

The Carter Order permitted the clandestine collection by the CIA of foreign intelligence information in the United States in two circumstances: "information concerning corporations or other commercial organizations or activities that constitute foreign intelligence" (2-208(a)) and "information concerning persons who are reasonably believed to be acting on behalf of a foreign power." (2-208(d)).

Thus the CIA was free to clandestinely gather information in the United States from any source if it was information relating to business activity and it could clandestinely collect any foreign intelligence information from any person that it suspected of operating for a foreign power.

The Reagan Order uses a different scheme. It poses no limits on targets. Rather it permits collection of any "significant" information and provides that: "No foreign intelligence collection by such agencies may be undertaken for the purpose of acquiring information concerning the domestic activities of United States persons." (2.3(b)).

The primary focus of this change appears to be the ability of the CIA to use informants and pretext interviews to gather foreign intelligence information from Americans who do not wish to share information with the CIA.

Consider a typical case. A prominent American travels to Iran shortly after the revolution. Upon his return he refuses an invitation to meet with the CIA. However, he is discussing his trip with journalists and at university meetings. The CIA sends a professor to a private meeting to take notes and report back or sends a person pretending to be a reporter to interview the traveler.

The Carter Order prohibited such activity; the Reagan Order permits it. Consistent with civil liberties principles the CIA should not be permitted to surreptitiously gather information from innocent Americans who choose not to provide it to the Agency.

COVERT OPERATIONS IN THE UNITED STATES

The Carter Order did not permit CIA covert operations inside the U.S. The Reagan Order permits such operations. It prohibits such operations at home and abroad only insofar as they are "intended to influence United States political processes, public opinion, policies, or media" (3.4(h)). While this restriction is not in the Carter Order, the ACLU strongly opposes permitting the CIA to conduct covert operations in the United States, since intended or not, they could adversely impact on U.S. political processes and the media.

PHYSICAL SURVEILLANCE ABROAD

While imposing no limits on the use of such techniques as informants and undisclosed participants in American organizations operating abroad, the Carter Order imposed sharp limitations on physical surveillance of Americans abroad. Such surveillance was permitted only against: (1) "a person reasonably believed to be acting on behalf of a foreign power" or (2) a former employee in a "sources and methods" investigation.

The Reagan Order substantially broadens this authority by permitting unrestricted physical surveillance by the CIA abroad of any person as part of any counterintelligence or sources and methods investigation. It also permits physical surveillance of Americans abroad to collect foreign intelligence when it is "to obtain significant information that cannot reasonably be acquired by other means." (2.4(d)).

There are other minor and more technical changes in the Reagan Order whose significance we have not yet been able to fully assess.

MAIL OPENING

The Carter Executive order permitted the opening of mail in United States postal channels only "in accordance with applicable statutes and regulations" (2-205). These require a warrant based upon probable cause of criminal activity. This requirement is not in the Reagan Order thus it permits the Attorney General to authorize mail opening without a warrant based on his finding that there is probable cause to believe that the target is an agent of a foreign power.

ASSISTANCE TO LOCAL LAW ENFORCEMENT AGENCIES

Except for certain enumerated purposes (repeated in the Reagan Order) the Carter Order prohibited assistance to local law enforcement agencies "except as expressly authorized by law" (2-308). The Reagan Order substantially expunged this authority by permitting assistance unless "precluded by applicable law" (2.6(d)).

Additional expansions of authority contained in earlier drafts of the Reagan Order were deleted from the final draft. These include (1) a claim of inherent power to conduct secret searches and electronic surveillance without probable cause to believe that the target is an agent of a foreign power and (2) increased authority for the CIA at home to "influence" political organizations by infiltrating them and to search for foreign intelligence information.

The events leading up to the issuance of Executive Order 12333 suggest the urgent need for the following congressional action:

Congress and the public must closely monitor the drafting of implementing procedures. Drafts should be made public to permit public debate and congressional hearings. The very expansive authority granted to the intelligence agencies in the Carter Order were very substantially circumscribed by the implementing procedures, most of which were made public. Thus the question of how significant are the changes made by the Reagan Order will depend very much on whether the new implementing procedures are more expansive. There is, therefore, an urgent need to insure that Congress and the public have an opportunity to review these procedures before they are put into effect.

Congress should insist that any revisions in the Executive Order be made public prior to implementation. (One way to do this would be to include in any intelligence authorization bill a provision prohibiting surveillance of Americans except according to the guidelines of E.O. 12333).

Congress should legislate certain basic principles restricting the surveillance of Americans, perhaps by including them in the authorization legislation:

What follows is an explanation of the basic problems raised by all the Executive Orders.

SURVEILLANCE OF AMERICANS

The fundamental question which any Executive Order should address is under what circumstances can U.S. intelligence agencies seek to gather information from Americans without their permission.

The ACLU's answer is straightforward: Americans at home and abroad should be free from surveillance by intelligence agencies unless they are suspected of engaging in illegal activities for or on behalf of a foreign power. The government does not have the right to spy on its own citizens to surreptitiously learn about their political, commercial, or private activities or to gain possession of information about foreign activities which they prefer to withhold from the government. Moreover, granting the intelligence agencies such authority is an invitation to repeat the abuses of the past, when a search for "foreign connections" was often used as a cover for investigating lawful domestic political activity.

The Executive Order gives a very different answer to this question. It permits the surveillance of Americans under a wide variety of circumstances when they are neither suspected of breaking the law nor of acting on behalf of a foreign power. The authorizations for surveillance by the CIA and the FBI both at home and abroad cover most of the rationales which justified abuses in the past. They include: Information constituting foreign intelligence or counterintelligence. (These two terms are very broadly defined so as to cover all information relating to foreign powers as well as to their intelligence activities.) Information obtained in the course of a lawful foreign intelligence or counterintelligence investigation. (This need not be foreign intelligence or counterintelligence information but may be information, for example, about political activity.) Information needed to protect intelligence sources and methods. Information concerning political sources or contacts.

These are precisely the rationales used for such programs as the CIA's Operations CHAOS and the FBI surveillance of the anti-war and new left movements.

FOURTH AMENDMENT TECHNIQUES

The Executive Orders proceed on the assumption that there is an "agent of a foreign power" exception to the Fourth Amendment which permits the Attorney General to authorize searches which would otherwise require a warrant based on probable cause of criminal activity.

There is no blanket "agent of a foreign power" exception to the Fourth Amendment. All such searches require a warrant based on a finding of probable cause, as Congress has already determined by enacting the Foreign Intelligence Surveillance Act (FISA). In the case of searches of premises, the statute authorizing such searches must include knock and notice provisions.

The Executive Order permits intrusive searches including of homes and offices to be conducted under the authority of the Attorney General without the approval of a neutral magistrate. It permits the Attorney General to authorize physical searches in the U.S. and physical searches and electronic surveillance abroad upon a finding that there is probable cause to believe that the individual is an "agent of a foreign power." That phrase is not defined in the order. The conduct need not be illegal or even secret.

INFILTRATION OF POLITICAL ORGANIZATIONS

The Order permits the infiltration of a lawful political organization for the purpose of gathering information even if it is information about lawful political activity which the organization seeks to keep secret. Moreover, it permits the FBI to infiltrate a political organization for the purpose of influencing the activity of the organization in any lawful investigation.

The right of political association is a bedrock principle established by the First Amendment and the government may not infiltrate a lawful political organization without undermining the very foundation of our Bill of Rights.

SECRET PROCEDURES AND DELIBERATIONS

It is outrageous that important civil liberties protections can be signed away with a stroke of the President's pen without any public debate. Only because early drafts of E.O. 12333 were leaked to the press did the President and the Congress learn of the very strong opposition in the country to efforts to permit the CIA to resume domestic surveillance. Some mechanism must be found to insure that any changes in the Order considered in the future will be the subject of full public debate based on official disclosure.

FBI GUIDELINES

Except for Fourth Amendment techniques, the orders do not limit FBI investigations or techniques. These are left to Attorney General guidelines, critical portions of which are kept secret.²

We believe that investigative standards for the FBI should be contained in the Executive Order and that, at the very least, they should be made public.

CIA SURVEILLANCE IN THE UNITED STATES

While there are some differences, the orders all permit the CIA to operate in the United States to gather information in secret from unwitting Americans. For example, such information may be gathered by the CIA at home in the course of a lawful counterintelligence investigation.

In enacting the National Security Act of 1947, it is clear that Congress in setting up the CIA intended to prohibit it from spying on Americans at home. The executive orders have been drafted in total disregard of that prohibition.

Mr. SHATTUCK. Thank you very much.

Mr. Chairman, we have a joint statement, as you have noted, that we submit for the record.

Mr. Berman, who is also an author of the statement, regrets he is unable to attend this morning.

We would like to amend the statement for the record before it is finally submitted, to add a few points that we are going to make orally this morning, with your leave.

Mr. Chairman, the Executive order signed by President Reagan on December 8 represents a threat, in our view, to civil liberties. While the order asserts that its procedure shall protect constitutional and other legal rights, the procedures actually adopted authorize a wide range of assault on the rights of Americans.

In this respect, we think it is important to note at the outset that the order is similar to the Executive orders which have been governing the activities of American intelligence agencies since 1976, when President Ford issued Executive Order 11905.

The new order goes beyond its two predecessors and expands the already expansive Executive assertion of authority to conduct intelligence activities aimed at American citizens.

Before describing this expansion, Mr. Chairman, we would like to quickly summarize the common dangers that we feel the Executive orders that have governed intelligence activities since 1976 pose to civil liberties:

First, intrusive surveillance of Americans both at home and abroad, using such techniques as physical surveillance, informants, confidential third party records, and pretext interviews, is permitted in many circumstances, even though the targets of the surveillance are neither suspected of breaking the law nor of acting on behalf a foreign power.

Second, the orders permit the infiltration of domestic political organizations in a wide variety of circumstances, again where there is no suspicion of lawbreaking.

Third, the orders permit the Attorney General to authorize secret searches of homes and other physical searches in the United States, as well as electronic surveillance, and physical searches abroad, without a judicial warrant which would otherwise be re-

² While the Justice Department has publicly asserted that it now applies the "agent of a foreign power" definition contained in FISA, there is no such requirement in the Executive Order nor is it included in public portions of the implementing procedures.

quired by the fourth amendment on a finding of probable cause that the individual is engaged in illegal activity.

Fourth, the orders are to be implemented by agency regulations which themselves are to be kept secret. Moreover, the order itself may be altered by the President without prior debate or any explanation.

Fifth, the orders contain no standards for the conduct of surveillance by the FBI, with the exception of the use of techniques under the fourth amendment. These are left to the Attorney General guidelines, which are also kept secret.

Sixth, the orders permit the CIA to operate within the United States and to conduct their surveillance of Americans.

But the new Reagan order goes further. Its key changes relate, as Admiral Turner has expressed to the committee, to CIA foreign intelligence investigations at home, CIA physical surveillance of Americans abroad, and CIA covert operations at home.

First, with regard to foreign intelligence collection inside the United States, the standard of the new order permits an expansion of that surveillance and raises new concerns about civil liberties.

The Carter order permitted the clandestine collection by the CIA of foreign intelligence operations in the United States in two circumstances:

First, where there may be "information concerning corporations or other commercial organizations or activities that constitute foreign intelligence."

Second, where there is "information concerning persons who are reasonably believed to be acting on behalf of a foreign power."

Thus, under the Carter order, the CIA was free to secretly gather information in the United States from any source if it was information relating to business activity, and it could secretly collect any intelligence information from any person that it suspected of operating for a foreign power.

The new order uses a different approach. It sets no limits whatsoever on targets of foreign intelligence collection inside the United States. Instead it permits collection of any "significant" information and provides that "No foreign intelligence collection by search agencies may be undertaken for the purpose of acquiring information concerning the domestic activities of United States persons."

The primary focus of this change appears to be the ability of the CIA to use informants and pretext interviews to gather foreign intelligence information from Americans who do not wish to share information with the CIA.

We think a typical case would involve a prominent American who traveled, let's say, to Iran shortly after the revolution and upon his return he declined to answer an invitation to meet with the CIA; however, he is discussing his trip with journalists and at university meetings. The CIA sends a professor to a private meeting to take notes and to report back, or sends a person pretending to be a reporter to interview the traveler.

The Carter order prohibited such activity, and the Reagan order would permit it. We think that, consistent with civil liberties, the CIA should not be permitted to surreptitiously gather information from Americans who choose not to provide it to the the agency under those circumstances.

The second area of expansion in the new Executive order is covert operations in the United States. The Carter order did not permit CIA covert operations inside the United States. The Reagan order does permit such operations. It prohibits them at home and abroad only insofar as they are "intended to influence U.S. political processes, public opinion, policies or media."

While this restriction is not in the Carter order, the ACLU strongly opposes permitting the CIA to conduct covert operations in the United States since, intended or not, they could adversely impact on U.S. political processes and the media.

The third area that we would like to highlight in terms of expansion is the physical surveillance that is authorized abroad over American citizens. While imposing no limits whatsoever on the use of such techniques as informants and undisclosed participants in American organizations operating abroad, the Carter order nevertheless imposed sharp limitations on physical surveillance of Americans abroad. Such surveillance was permitted only against, first, a person reasonably believed to be acting on behalf of a foreign power or, second, a former employee in a source-and-methods investigation.

The new order substantially broadens this authority by permitting unrestricted physical surveillance by the CIA abroad of any person as part of any counterintelligence or sources and methods investigation. It also permits some physical surveillance of Americans abroad to collect foreign intelligence when it is "to obtain significant information that cannot reasonably be acquired by other means."

Mr. Chairman, let me, before turning to Mr. Halperin, who will amplify our introductory comments here, pose the question, what does all of this mean?

We think that not only are there now few, if any, significant controls over U.S. intelligence activities as they relate to American citizens. Not only have the well-documented and thoroughly investigated intelligence abuses of individual rights in the past apparently been wiped off the record as if they never happened, but the Government appears to have turned its enormous intelligence apparatus against its own citizens, as if they were the enemy.

This, we think—as Admiral Turner has said himself this morning—is severely damaging, both to the intelligence agencies themselves and more importantly, to the rights of American citizens.

Mr. Halperin will discuss two additional ways in which the new order expands intelligence agency authority, and then he will provide you with our recommendations and an overview of what any Executive order in this area should do in order to properly balance the rights of Americans with intelligence collection.

Mr. HALPERIN. First a few words about the physical surveillance abroad to try to explain the confusion which existed with some of the questioning of Admiral Turner. The procedure for physical surveillance abroad in the new order permits it in a counterintelligence setting without any standard. That is, as long as the CIA is conducting an investigation of espionage or other counterintelligence, it may conduct physical surveillance of an American.

There is additional authority that permits it to conduct physical surveillance of Americans to gather "significant" intelligence. That

is not a counterintelligence investigation. That is where the CIA simply wants to gather foreign intelligence information from an American citizen who is not suspected of being engaged in espionage or working for a foreign power, but simply has in his or her possession information about a foreign country that the CIA would like to have or the Government would like to have.

And I think it is that expansion that is particularly troubling. What the CIA is now authorized to do is to follow innocent persons abroad, simply because they have in their possession information about a foreign country that the CIA would like to acquire. There's no justification for that.

There are two additional expansions in the Executive order which we have found or have had pointed out to us since we wrote the statement—and we would like to add to the written statement, for the record. First, the one Admiral Turner mentioned—mail opening. As has already been stated, the new order permits the opening of mail of American citizens through United States postal channels both in the United States and abroad without a warrant, without probable cause of criminal activity, on a finding by the Attorney General that the person who is the target of that investigation is an agent of a foreign power.

We think that's an unwarranted expansion, and there again is no record of whether that might be needed. But in any case, we think it is a violation of the fourth amendment.

The other change is in the clause of the Executive order dealing with assistance to local law enforcement agencies. And here what you have is a change from permitting it only when expressly authorized by law, which is what the Carter order said, to the Reagan order which permits it unless it is precluded by applicable law. And since there are, in fact, as far as I am aware, very few laws which specifically preclude CIA assistance to local law enforcement agencies, there is potentially a very substantial expansion of CIA authority. What it's intended to mean and what its implications are, I really don't know.

We have suggested there are a number of ways in which the Carter order and the Reagan order are similar and ways in which we think they are troubling. But there are two very important differences in the situation when the Reagan order was issued as contrasted with President Carter's.

First, when President Carter released his order, he specifically endorsed charters and specifically called upon the Congress to enact charters, so that the order was seen as an interim measure pending the enactment of legislation. The Reagan administration has, as far as one can tell, abandoned the effort to draft legislative charters, and therefore this order is to remain in effect permanently or at least until we get a new President who wants charters. I think, therefore, it is incumbent upon the Congress to move toward the enactment of charters.

Now clearly, it is not possible for the Congress to enact a comprehensive charter over the objection of the executive branch. But what I think Congress can begin to do is to put specific prohibitions, specific limitations, to require specific regulations, and to do that either in the form of a separate bill or probably more appropriately in the form of provisions in the authorization bills—the

authorization authority for the FBI, which comes out of this committee, and the authorization for the CIA, which comes out of the Intelligence Committee. So, we would urge both of these committees to begin to consider enacting limitations.

To give one example, the Reagan administration considered and then rejected elimination of the Attorney General's approval of guidelines for surveillance of Americans. It has now apparently accepted the judgment which the Ford administration reached and which the Carter administration reached that the Attorney General should be required to review and approve regulations for surveillance of Americans.

We think it would be appropriate to make that part of the legislation and to say in the legislation that intelligence agencies and the FBI may not conduct surveillance of Americans for intelligence purposes except pursuant to guidelines approved by the Attorney General, so that if a future administration came into office and considered changing that procedure, it would have to seek legislation to do so, rather than be able to do so with the stroke of the Presidential pen.

It almost happened in the Reagan administration in March before they looked at the problem in a detailed way and reached a conclusion that the Attorney General should be part of the process.

Second, we think it is very important to find a mechanism for the Congress and the public to participate in a review of the implementing directives. As Admiral Turner has testified this morning, the real restrictions on the intelligence agencies and on the FBI are in the implementing regulations—the directives.

These directives are substantially more constraining than the Executive order was. And if those implementing directives are to be changed, that would be the place where the real changes would occur in the ability of the intelligence agencies to operate.

We would like to put in the record of this hearing the publicly available implementing directives under the Executive order from the Department of Defense, from the CIA, and from the FBI as far as they are publicly available.

I might say, Mr. Chairman, in the Carter administration, it was extraordinarily difficult to get those documents publicly released, even though they were not classified. The agencies were not very enthusiastic about releasing them, and it took a number of different efforts from a number of different directions before we were finally able to secure public release of those documents. They do add up to much tighter restrictions, and I think it is important to find some way to insist upon public debate and public scrutiny of the unclassified implementing directives before they come into final form as implementing the Reagan Executive order.

I will not go through in any more detail, though our statement does, of the problems we have with both orders, except to call your attention to one of them, which I think probably in a way is the most outrageous and the one which is clearly, in our view, unconstitutional. That is the requirement that permits the Attorney General to authorize the FBI to secretly search the homes of Americans without a warrant, without a finding of illegal activity, without any knocking at the door, without any needing of a notice that the FBI has been there, simply by the Attorney General finding

that the person is, "an agent of a foreign power," that there is probable cause to believe he is an agent of a foreign power, a term which is, by the way, not defined in the Executive order.

But now this procedure which existed in the Carter order as well proceeds as though the fourth amendment to the Constitution says at the end of it, "except in national security cases." I have looked at the fourth amendment, and I do not find that there is any such clause.

If you go back to the history of that amendment and if you had told the people that drafted the fourth amendment that the problem with the writs of assistance that the British issued, which played a major role in leading to the Revolution, was that the British Government did not tell itself people whose homes it was searching were agents of the French Government and that had they only told themselves that these people were agents of the French Government, the searches would have been OK, I think they would have been astonished. And if you had told them they had drafted an amendment that permitted the President or the Attorney General to search their homes simply by making that finding to themselves, that they were agents of the French or agents of the British, I think they would have been absolutely astonished.

I think that is not what the fourth amendment means. I think that provision is clearly unconstitutional, and I think it is a continuing threat to the privacy that all Americans were promised under the fourth amendment, and it is something that this committee, since those searches in the United States are done by the FBI, could do something about.

I urge you to look into that matter in more detail and to consider legislation to stop what I and the ACLU consider to be an unconstitutional practice.

Thank you.

Mr. EDWARDS. Thank you very much, Mr. Halperin and Mr. Shattuck. The documents you mentioned will be made, without objection, part of the record.¹

Mr. EDWARDS. I recognize the gentleman from Illinois, Mr. Hyde.

Mr. HYDE. I thank you, Mr. Chairman, and I, too, thank the witnesses for very useful testimony. And I, too, am not satisfied that the fourth amendment is fulfilled by this procedure, and I do think that needs some study.

I do take consolation in the fact that this order does not change the law nor overrule the Constitution, and it is specifically subject to that. So, if a law prevents such a search and seizure, then indeed it's illegal, and it can't be made legal by this Executive order.

Mr. HALPERIN. The problem, Mr. Hyde, is that there's not much consolation to be had to somebody who has had his papers stolen from his home without his knowing about it. Since there is no notice, you do not have the normal protection that you have to sue when the Government seizes your papers.

Mr. HYDE. Counsel has just brought to my attention the Supreme Court decision of *Katz v. United States*, 389 U.S. 347 [1967], a case involving warrantless national security electronic surveillance which apparently authorized that.

¹ Material appears in app. II.

Mr. HALPERIN. It has a footnote saying the question of whether warrants are required for national security wiretaps is not reached in the case. The case involved a domestic criminal investigation. The Supreme Court of the United States has never explicitly ruled on this question.

I think it's clearly prohibited by the fourth amendment. We would like to have a court test on it. It is very difficult to do that, because searches are conducted secretly, and, you know, the FBI comes to your house with a warrant, they leave a copy of the warrant if you're not there. If you think the search is illegal, you can go to court and challenge it.

The problem here is the FBI can now go into your house secretly, photocopy what's there, and you never know that it's been there, and therefore you have no way to challenge it, and therefore I think it's up to the Congress to decide what the appropriate procedure is.

Mr. HYDE. Mr. Shattuck, in your statement, you say the orders permit the infiltration of domestic political organizations. I have always had trouble trying to figure out what is and what is not a domestic political organization. I know some that clearly are, for example, the Ku Klux Klan. Would you characterize it as a domestic political organization?

Mr. SHATTUCK. I would characterize any group of individuals who are lawfully banded together to advocate any purpose or any political activity that they so desire as a political organization. Whether the Ku Klux Klan fits within that definition depends in some circumstances as to what they are doing.

Mr. HYDE. How does he know what they're doing? The potential for violence exists, does it not, with the Ku Klux Klan—people who meet wearing hoods so they can't be identified?

Wouldn't you say that the history of that organization would tend to indicate that it is prone to violent activity?

Mr. SHATTUCK. It's putting the cart before the horse, in our view, to authorize intrusive intensive police surveillance of political groups to find out whether they are engaged in illegal activity.

Mr. HYDE. That would include the FALN?

Mr. SHATTUCK. It would include any organization which is not known to be engaged in or where there is no probable cause to believe they are engaged in illegal activity.

Mr. HYDE. What do you think of the activities of Phil Agee and Louis Wolf and the roles they have played in disclosing the identity of CIA personnel, Mr. Shattuck? Do you have any opinion on what they are doing and whether there should be some law prohibiting their activity?

Mr. SHATTUCK. I don't have any opinion on what particular individuals are doing, but I certainly have strong—

Mr. HYDE. You mean you won't express one?

Mr. SHATTUCK. I have a strong opinion about the rights of any individuals to publish or speak in a manner that's protected by the first amendment.

Mr. HYDE. Even if it will cost the life of the person whose name is revealed and even if it's done with the intention of damaging the foreign intelligence activities of this country?

Mr. SHATTUCK. Well, you have put some glosses on your hypothetical, but whatever the first amendment does not protect, it clearly protests the disclosure of information or the publication of information that is already on the public record, including all manner of publication that may relate to the identity of intelligence agents.

But you have added to your hypothetical—and I don't believe any court has tested what you have said.

Mr. HALPERIN. Mr. Hyde, if I can add, the Senate may this afternoon debate whether such a bill should include the requirement that there be an intent to injure intelligence activities. And I welcome your endorsement of that version of the bill.

Mr. HYDE. They don't listen to me very often.

Are you reassured by section 2.8 which says: "Nothing in this order shall be construed to authorize any activity in violation of the Constitution or statutes of the United States?" Does that provision reassure you?

Mr. HALPERIN. Let me say, since it was in the previous orders, if it had been taken out, I would have been alarmed. There is obviously some assurance to be taken from it. But the problem in this area is that, except for fourth amendment techniques—even there, there is some ambiguity, as has been suggested—there's no clearly established constitutional law, and except for the Foreign Intelligence Surveillance Act, there are no statutes.

So, the question is, what is constitutional and what is permissible? And that has not been settled by the courts. And therefore that provision does not say explicitly very much, and I think it's up to the Congress in this area to say what it thinks the Constitution permits and doesn't.

Mr. HYDE. All right. I have no further questions.

Thank you.

Mr. EDWARDS. Under the old order, the Attorney General must approve CIA intelligence operations within the United States. That is changed in a significant manner in the present order. We thus have two major intelligence organizations operating within the United States, or with authority to operate in the United States; is that correct?

Mr. SHATTUCK. That would certainly seem to be the case under the new order; yes.

Mr. EDWARDS. Under the old order, the CIA cannot conduct covert actions in the United States. Under the new order, the CIA can, as long as it reports what they're doing to the two intelligence communities. Is that also correct?

Mr. HALPERIN. That's correct. That's a very major change, as Admiral Turner has mentioned as well.

Mr. EDWARDS. What do you mean by "covert actions in the United States?" I can think of some of them—publishing of books, for example. The CIA has published books in the past without revealing it's a CIA book. The Pentofsky papers I believe were financed by the CIA. And we know of some others. Is that the type of covert action we could expect to be going on in the United States with secret financing by the CIA?

Mr. HALPERIN. There appears to be a provision on that particular activity, since there is a rule that says that it cannot be intended

to influence the U.S. political process, public opinion policies or media.

Now, again, the implementing directives will tell you whether publishing a book clandestinely in the United States is influencing the media. I would say it was. But it would involve all sorts of activities.

For example, there are many organizations in the United States composed of individuals who are not American citizens. This order would apparently permit the CIA to conduct covert operations designed to influence the activities of those organizations, to disrupt them or to otherwise change their activities, and would permit the CIA to conduct covert operations directed at foreigners visiting the United States, residing in the United States.

It does not, on its face, permit the CIA to conduct activities designed to manipulate the activities of Americans. But the danger is that once you let them operate within the United States the line on where you influence the foreigners and influence Americans will be broken.

Mr. SHATTUCK. Mr. Chairman, I would like to add to that. I think this is one of the most problematic areas, and it demonstrates the difficulty of the language as used in these orders and implementing directives to the extent that the use of the language, "intended to influence," is intended to be a limitation. That is a real problem, because obviously something that can have the effect of influencing a domestic organization, the publication of a book such as you suggest, could have that effect. And if the covert operation which was aimed at publishing that book was not intended to influence, at least in the view of those who are conducting it, then it would be outside the scope of this prohibition.

So, anything that may have the effect—any covert operation that may have the effect of influencing American organizations, public opinion, media, whatever, would be beyond the reach of this limitation if it was not intended to so influence.

So, we do not take much comfort from that limitation.

Mr. EDWARDS. Mr. Shattuck, you mentioned that in the old orders only the FBI could make arrangements with local or State police, but under the new order the CIA can go to a local police department or a State police department and make arrangements and have contracts, I suppose, and share dossiers.

Does that mean all intelligence agencies will be authorized to cooperate with law enforcement agencies in intelligence activities, provide special equipment, et cetera?

Mr. SHATTUCK. It's very difficult for us to say what any of that means, except to read it on its face and to assume it will be possible for the CIA and the FBI to obtain routine assistance from local law enforcement agencies in the conduct of anything they can do under this order. Whether it would involve actually dispatching particular local police officials on CIA and FBI tasks I think is something that certainly is suggested. But the implementing directives of the order are going to spell that out. But it's a very broad authority and does involve cooperation at all levels with the CIA and the FBI in the conduct of these intelligence-gathering operations.

Mr. EDWARDS. Well, this would be done without any constraints such as the FBI has upon it—the Levi guidelines—and without the day-to-day oversight of the Attorney General and so forth.

This could all be done surreptitiously and without any supervision or oversight; is that correct?

Mr. SHATTUCK. That's right. I think when you're in this foreign intelligence area, the area governed by this Executive order, all the guidelines and limitations on activities of the FBI, certainly the CIA, and State and local police agencies are out the window, at least until such time as there are some limitations put on by the implementing directives. But we don't have any limitations at this stage.

Mr. EDWARDS. Well, the line gets drawn rather finely and gets confused.

Apparently in operation CHAOS the CIA got heavily involved in domestic organizations because the particular President thought that they might be connected with a foreign power in opposition to the war in Vietnam; isn't that correct? So that the foreign connection may be suspected in almost any case.

Mr. SHATTUCK. Well, that's right. That is an area that we think is problematic in the early order as well. To the extent there is no definition of "foreign agent," there is no foreign agent limitation on anything that would involve collection of significant intelligence. Foreign intelligence gathering would be authorized in the area of domestic surveillance of organizations.

Mr. EDWARDS. The gentleman from Illinois, Mr. Hyde.

Mr. HYDE. I am interested in one of your comments. I find the difference between a U.S. person or an American citizen and a non-U.S. person more obstructive than helpful in this field of legislation. Much ado is made about spying on American citizens. Well, this morning the Washington Post, on page A-3, Los Angeles, UPI, printed: "Marian Zacharski, a Polish spy who conspired to sell U.S. defense secrets to the Communist bloc, was sentenced today to life in prison, and William Holden Bell, his confessed American accomplice, was given a term of 8 years." The story goes on, to the effect that Bell had been dealing and photographing documents from Hughes Aircraft from late 1978 to April 1981 and turning them over to Zacharski and other agents in exchange for gold coins and cash.

Now, the detection of this type of operation is important to our national security—to the defense of this country.

But making distinctions between U.S. persons and non-U.S. persons, obfuscates the issue. Doesn't that make a very difficult task? I see nothing wrong. They're both Federal people, paid by the same taxpayers. Parenthetically, I don't see the difficulty in taking the CIA, since we presume their personnel are moderately intelligent, and briefing them on the American law of search and seizure and surveillance and warrant, and the order. We ask the cop on the beat to know that. I don't see that that's so difficult.

I'm just asking how useful that distinction is?

Mr. HALPERIN. I think, Mr. Hyde, the distinction is unlawful because this order mostly deals not with investigations of criminal activity. Where the FBI is conducting an investigation of espionage, terrorism or international terrorism, then it does not in general

make distinctions based on whether one is a U.S. person. The situation is very different when the FBI or the CIA wants to get that information from an innocent American.

Mr. HYDE. From the sister of the KGB agent who is an American citizen?

Mr. HALPERIN. No, no; once they have the information——

Mr. HYDE. But having the information.

Mr. HALPERIN. No; once they suspect a person of being an agent of a foreign power or working with the KGB or any intelligence organization, then they're part of a counterintelligence investigation and the restrictions are totally different.

The restrictions only have to do with gathering information from innocent Americans. An American businessman goes abroad and learns something he doesn't want to reveal to the FBI, or a reporter goes abroad. That's where the distinction comes in. And there I think it is a valid distinction.

Mr. SHATTUCK. Let me just add to that, a couple of sentences, Mr. Hyde.

A U.S. person, of course, in the definition Mr. Halperin has just set forth, includes foreigners who are not agents of a foreign power. So, it's not just innocent Americans. It is anyone who is, in fact, within that meaning.

Mr. HYDE. A legal resident.

Mr. SHATTUCK. Yes.

Mr. EDWARDS. Counsel.

Ms. LEROY. The Carter order limited collection of foreign intelligence in the United States by agencies other than the FBI, primarily to information acquired from cooperating sources; is that accurate?

Mr. HALPERIN. Well, it also permitted it if it was commercial or business information and if the target was reasonably believed to be acting on behalf of a foreign power.

Ms. LEROY. The Reagan order, on the other hand, does provide that all intelligence agencies may collect information constituting significant foreign intelligence without any reference to the requirement that the target might be acting on behalf of a foreign power. Is that accurate?

Mr. HALPERIN. Yes.

Ms. LEROY. Well, my question is: How do you differentiate between significant and insignificant?

Mr. HALPERIN. How you do that before you collect it is really quite a trick. I don't think you do and I don't think that's a very important limitation on collection. Again, it depends on what the implementing directives are going to say. I don't think it's a significant limitation.

Mr. SHATTUCK. This is a major area of expansion in the Reagan order over the Carter order, as we pointed out in our statement. To the extent there is any limitation at all with regard to the collection of foreign intelligence information in the United States, it's that limitation of "significant" foreign intelligence, and it's not at all clear who is going to make that judgment.

You know it's not going to limit the collection from any particular person, the way in which the Carter order would have, although we think very insufficiently, by limiting it to foreign

agents. It's a very major expansion. It's open season on the collection of foreign intelligence in the United States if somebody decides that it's significant—somebody in the CIA.

Ms. LEROY. Both of you have raised the importance of the implementing procedures, not only in this area, but Mr. Halperin, you did in your discussion with Mr. Hyde on physical searches. Admiral Turner raised it in connection with the role of the Attorney General. In addition, there's been conflicting testimony over mail opening and what the order does with respect to mail openings and warrant requirements.

But you have also discussed the difficulties which you had obtaining copies of the unclassified version of the Carter implementing orders. I would assume that many of the implementing procedures in the Reagan order will not only be difficult to obtain but will be classified and therefore unavailable to the public through any means. So, we are left with the fact that these procedures are to be made available to the two Intelligence Committees and probably nobody else.

What happens in the event that the procedures are made available to the Intelligence Committees, presumably sometime before they're actually implemented, and the Intelligence Committees send indignant and outraged letters to the President or the CIA Director and those two individuals chose to ignore the two Intelligence Committees? What is the next step?

Mr. HALPERIN. What we have already suggested, we think the proper step, as Admiral Turner said would be the enactment by the Congress of specific limitations so that the implementing directives must be consistent with these limitations.

If our prior practice is followed, I don't think the Intelligence Committees will see these implementing directives before they are put into effect. I don't believe they did in the Carter administration, although I'm not certain.

Ms. LEROY. So, in effect, the committees have no input, despite the fact that you and Admiral Turner have indicated the importance of the procedures. They would not, in fact, be able to see them at all.

Mr. HALPERIN. I think the Intelligence Committees certainly have the right to seek them under the oversight bills, and this committee has the right to ask those committees for them under the procedures which established the committee.

Ms. LEROY. The Reagan order appears to provide that in cases of dispute over the implementing procedures, which are in most cases to be drafted initially by the intelligence agency in question and then agreed upon by the Attorney General, in cases of dispute, it's the National Security Council that gets to establish the procedures; is that correct?

Mr. HALPERIN. There is appeal to the National Security Council.

Ms. LEROY. Does the Attorney General sit on the National Security Council?

Mr. HALPERIN. He's not a statutory member. Presidents generally have put him on, at least for certain purposes.

Ms. LEROY. Does the order make it clear whether he would be on the Council for this purpose, for resolving disputes?

Mr. HALPERIN. Not as far as I'm aware.

Ms. LEROY. Is the Director of Central Intelligence a statutory member?

Mr. HALPERIN. He is a statutory adviser.

Ms. LEROY. So, in effect, who is getting to deciding cases of a dispute?

Mr. HALPERIN. My guess is, in the case of a dispute, ultimately the President would get to decide whatever the Executive order said.

Ms. LEROY. But, at least in the first instance in a dispute between the Attorney General and a branch of the intelligence community, it's intelligence advisers to the President who get to resolve the dispute.

The order is divided into two parts.

The first part we haven't talked about very much. It appears to be a general establishing of the responsibilities of the various agencies within the intelligence community.

Part 2 is the section that deals primarily with the collection of information types of investigation, and types of techniques.

Do you see part 1 in any way as constituting a separate grant of authority in any area?

For example, there is a provision on page 3 which authorizes the intelligence community to engage in such other intelligence activities as the President may from time to time direct. It's on the top of page 3 of the Reagan order.

Mr. HALPERIN. That was a problem in a previous draft of the order, but it's been fixed in this order. As most of these things are in the most esoteric ways, I'm not sure I can find it, but there is a provision here making it clear that there is no grant of authority in section 1 which is not limited by the limitation of section 2.

Ms. LEROY. Well, let me pursue that for a second. In section 2 the order speaks primarily in terms of collection of foreign intelligence and in terms of authority here in the United States. But in section 1, under section 1.8[a], the order speaks in terms of authority of the CIA to collect, produce, and disseminate foreign intelligence.

Is there a difference between collection and production? And do you think it's significant in this case? Or are you confident that the provision of the order you have just referred to takes care of any difference?

Mr. HALPERIN. I think it takes care of it.

Ms. LEROY. I have no further questions.

Mr. EDWARDS. Thank you very much, gentlemen. You have been very helpful.

[Whereupon, at 11:55 a.m., the hearing was adjourned.]

EXECUTIVE ORDER ON INTELLIGENCE ACTIVITIES

WEDNESDAY, JANUARY 27, 1982

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:30 a.m., in room 2237, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representative Edwards, Kastenmeier, Schroeder, Washington, Hyde, and Sensenbrenner.

Staff present: Catherine A. LeRoy, chief counsel, and Thomas M. Boyd, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

The House Judiciary Committee has jurisdiction over the budget and the laws affecting the Department of Justice and also has oversight responsibilities with regard to the Department of Justice and the Federal Bureau of Investigation. The Federal Bureau of Investigation work has been delegated by the full committee to this subcommittee.

This morning the subcommittee is going to continue its hearings on the recently promulgated Executive order on intelligence activities. We have already heard testimony from former Senator and chairman of the Senate Select Committee on Intelligence, Frank Church, former CIA Director Stansfield Turner, the ACLU and the Center for National Security Studies, and now today we are pleased to have the opportunity to hear from the Reagan administration.

We think it is very important to schedule the Department because the subcommittee's primary concern throughout this process has been the effect of the new order on the role of the Attorney General and the FBI in intelligence policies and activities in this country.

So, we are particularly pleased to welcome this morning Mr. Richard Willard, who was formerly counsel to the Attorney General for Intelligence Policy. Mr. Willard is currently a Deputy Assistant Attorney General for the Civil Division. However, in his previous capacity he was heavily involved in the evolution of the Executive order and the formulation of the Justice Department role under that order. Before Mr. Willard proceeds, I recognize the gentleman from Illinois, our good friend, Mr. Hyde.

Mr. HYDE. I thank you, Mr. Chairman.

Since our last meeting on this subject, on December 15 of last year, I have reviewed the law on the subject of the application of the fourth amendment to national security matters. I did so because of statements made by witnesses before the subcommittee at that time, to the effect that the provisions of the President's new Executive order violate the law.

Minority counsel has prepared a memorandum of law which I would like to submit as a part of the subcommittee record.

Mr. EDWARDS. Without objection, so ordered.

[The information follows:]

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Congress of the United States

Committee on the Judiciary

House of Representatives
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December 18, 1981

GENERAL COUNSEL
ALAN A. PARKERSTAFF DIRECTOR
BARNER J. CLINEASSOCIATE COUNSEL
FRANKLIN D. POLK

MEMORANDUM

TO: Honorable Henry J. Hyde

FROM: Thomas M. Boyd
Associate Counsel
Subcommittee on Civil and Constitutional Rights

RE: Presence of a "Foreign Policy Exception" to the Warrant Requirements of the Fourth Amendment

Per your request, I have reviewed the law on the alleged foreign intelligence exception to the warrant requirement of the Fourth Amendment. The opponents of Executive Order 12333 ^{1/} have argued that electronic surveillance and physical searches conducted outside of the formal warrant process violate the Amendment's protection against "unreasonable searches and seizures." ^{2/} Moreover, they contend that the covert nature of such searches make their discovery, and consequently their susceptibility to legal attack, more difficult.

The President, on the other hand, maintains that a "foreign intelligence" exception to the Amendment's warrant requirement permits the authorization of certain limited searches by his delegate, in this instance, the Attorney General. ^{3/} My conclusion is that the law is unsettled, but that the weight of the case law seems to favor the Government's position. ^{4/} By the end of the present term of the Supreme Court, the issue may be clarified. A brief summary follows.

- ^{1/} This Order, signed by President Reagan on December 4, 1981, replaced Executive Order 12036 issued by President Carter on January 24, 1978.
- ^{2/} The argument has also been made that electronic surveillance, often practiced in foreign intelligence investigations, is more intrusive than a physical search. This position is based on the conclusion that electronic surveillance is not selective but rather is directed at all conversations, whether relevant to the investigation or not.
- ^{3/} Executive Order 12333, para. 2.3, et seq.
- ^{4/} See Truong v. United States (Docket No. 81-631), consolidated with Humphrey v. United States in a petition for writ of certiorari from the Fourth Circuit. A decision on whether to accept the writ is expected by January 11, 1982.

Though the Supreme Court has yet to deal directly with a case involving a possible exception to the Fourth Amendment for foreign intelligence purposes, it has addressed the issue as it applies to domestic security investigations. United States v. United States District Court (Keith), 407 U.S. 297 (1972). In Keith, the Government used wiretaps to acquire information on three defendants charged with destroying Government property; no foreign intelligence connection was alleged. Justice Powell, writing for the Court 5/, framed the question in terms of a balance between the "legitimate need of government to safeguard domestic security" and a corresponding need to protect the privacy and freedom of its citizens. 6/ "We must also ask," he continued, "whether a warrant requirement would unduly frustrate the efforts of government to protect itself from acts of subversion," 7/ While admitting that there was "pragmatic force" 8/ behind the Government's concern about the need to collect and maintain intelligence on subversive forces, Powell concluded that the case in Keith had not been made. It is important to note, however, that he expressly did not address issues which may be involved with respect to activities of foreign powers or their agents. 9/ The Court went on to say that "warrantless surveillance, though impermissible in domestic security cases, may be constitutional when foreign powers are involved. . . ." 10/ (Emphasis added.)

In its testimony before the Subcommittee on Civil and Constitutional Rights on December 15th, representatives of the American Civil Liberties Union (ACLU) argued that "(t)here is no blanket 'agents of a foreign power' exception to the Fourth Amendment." 11/ They referred also to the Foreign Intelligence Surveillance Act (FISA) in noting that, under certain circumstances, warrants are currently required by statute. Since paragraph 2.8 of the President's Order specifically recognizes restraints, both present and

5/ Four Justices (Brennan, Marshall, Stewart, and Blackmun) joined with Justice Powell. Chief Justice Burger and Justice Douglas filed concurring opinions; there was no dissent.

6/ Id., at 315.

7/ Id.

8/ Id., at 315.

9/ Id., at 322.

10/ Id., at fn. 20. A similar reservation was expressed by Justice White in his concurring opinion in Katz v. United States, 389 U.S. 347, 363-364 (1967).

11/ Statement of John H. F. Shattuck, Jerry J. Berman and Morton H. Halperin, December 15, 1981, at 9.

MEMORANDUM

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future, which might be imposed by statutory and constitutional law, and, since an Executive Order cannot lawfully supercede any existing statute or Supreme Court ruling due to its exclusively executive nature, the position of the Government is not inconsistent with restraints presently placed upon it by the FISA. 12/

The Supreme Court is now considering whether or not to accept a writ of certiorari from the Fourth Circuit in the case of Truong Dinh Hung v. United States 13/. In Truong, the issue of the foreign agent exception was reached. In circumstances preceding the 1978 passage of FISA, the Fourth Circuit panel unanimously held that the Government may conduct electronic surveillance without a warrant so long as the investigation is "primarily" a foreign intelligence investigation. It specifically rejected the argument that such an exception exists, if at all, only when an investigation is conducted "solely" for foreign policy reasons. 14/ In deciding in favor of the "foreign intelligence exception" to the Fourth Amendment, the Court ruled that "most crucially, the executive branch not only has the superior expertise in the area of foreign intelligence, it is also constitutionally designated as the pre-eminent authority in foreign affairs." 15/ In addition, it held that:

because of the need of the executive branch for flexibility, its practical experience, and its constitutional competence, the courts should not require the executive to secure a warrant each time it conducts foreign intelligence surveillance. 16/

But there is a limit. "[O]nce surveillance becomes primarily a criminal investigation, the courts are entirely competent to make the usual probable

12/ For a capsulation of the ACLU's view, see Judge Leventhal's concurring opinion, joined by Judge Merhige of the Eastern District of Virginia, in United States v. Ehrlichman, 546 F.2d 910, 933 (1976), cert. denied, 429 U.S. 1120 (1977).

13/ See fn. 4, *supra*, 629 F.2d 908 (1980).

14/ Truong, at 912-916. Judge Donald Russell concurred in the court's decision on the foreign intelligence exception but dissented on other grounds.

15/ Id., at 914.

16/ Id.

MEMORANDUM

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cause determination," 17/ In Truong, the court approved the district court's decision to permit as evidence conversations obtained as a result of a wiretap so long as the focus of the investigation at that time was "primarily" motivated by foreign intelligence needs. Once it was concluded that the investigation's focus had become "primarily" criminal, the conversations were excluded.

An appeal in Truong has been filed in the Supreme Court and has been consolidated with the appeal of a co-defendant in Humphrey v. United States (Docket No. 81-5344). A decision on whether or not to hear the appeal is expected by January 11, 1982.

17/ Id., at 915. The Fourth Circuit also discussed the question of whether its decision would be changed because of the adoption of the FISA. In footnote 4 of its opinion, it commented that FISA's provisions teach "that it would be unwise for the judiciary, inexperienced in foreign intelligence, to attempt to enunciate an equally elaborate structure [of procedures] for core foreign intelligence surveillance under the guise of a constitutional decision."

Mr. HYDE. His conclusion is that, while the Supreme Court has not yet reached the precise question of national security searches, the law at the circuit level suggests that there is, indeed, such an exception to the warrant procedure.

In fact, the Supreme Court denied a petition for certiorari from the fourth circuit a little over 2 weeks ago, on January 11.

The case which was thus upheld, *Truong Dinh Hung v. United States*, finds that an exception for national security cases does exist.

Moreover, I would like to insert a letter from House Intelligence Committee Chairman Edward P. Boland to the New York Times dated December 15, 1981, the same date as our last hearing.

Mr. EDWARDS. Without objection, so ordered.

[The information follows:]

HOUSE OF REPRESENTATIVES,
PERMANENT SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C., December 15, 1981.

EDITOR,
New York Times,
New York, N.Y.

DEAR SIR: In your recent editorial ("Looser Reins for the CIA," December 9, 1981), you ask whether the Central Intelligence Agency will once again spy on Americans. You term President Reagan's new executive order governing intelligence agencies "not reassuring."

One major uncertainty in the order—new authority for clandestine collection in the United States of "significant foreign intelligence" about Americans—is troubling. Executive orders are as much a restriction on presidents as they are on agencies like the CIA, one reason Presidents Ford and Carter established public restrictions on intrusive intelligence activities. The verdict remains out on what President Reagan considers significant. Only follow-on procedures, hopefully public ones, will tell for sure.

There is some cause for cautious optimism, however. It is clear to me that the President—and those who advised him to sign the new order—are aware of the uncertainties they have created. This Administration listened carefully to the Congressional oversight committees in fashioning its approach to intelligence regulation. The final product, aside from the troubling question of what "significant" will come to mean, is no appreciable departure from the Carter order. What is new is the stamp of approval the President has placed on the intelligence function.

I do not quarrel with the President's desire for a more effective intelligence community. As long as this Administration recognizes that it is the attitude, intentions and activities of foreign powers the CIA should investigate, intelligence activities should pose fewer threats to civil liberties.

The President has signed a respectable executive order. The intelligence chiefs should insure that the all important implementing procedures reflect similarly cautious judgment.

Sincerely,

EDWARD P. BOLAND,
Chairman.

Mr. HYDE. Please note that Chairman Boland, whose bipartisan select committee consulted freely with the White House on this issue before the President's order was released, notes that, aside from the meaning of the word "significant" in the order, the "final product * * * is no appreciable departure from the Carter order."

Content that any risk of misinterpreting the meaning of significant can be lessened, if not eliminated, by close oversight from his committee, Chairman Boland concludes that the President has signed a respectable order.

In light of Chairman Boland's remarks, combined with a review of the applicable law which appears to support the President, I can

only wonder why this subcommittee must expend its time and resources beating a dead horse.

Since all the classified justifications for this order were presented to Chairman Boland's committee, and are not before us, our deliberations are necessarily incomplete and therefore cannot provide an adequate basis for any legislative or oversight determinations.

This hearing, in short, is an ex post facto waste of time.

Nonetheless, I shall attend with great interest and see what develops, but I would like the letter and the memorandum of law to be put in the record.

Thank you.

Mr. EDWARDS. Thank you, Mr. Hyde.

You may proceed.

TESTIMONY OF RICHARD WILLARD, DEPUTY ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION, DEPARTMENT OF JUSTICE

Mr. WILLARD. Thank you, Mr. Chairman.

I have been in my new job as Deputy Assistant Attorney General since Monday, so I still feel comfortable wearing the intelligence counsel's hat.

It is a pleasure for me to appear today on behalf of the Attorney General before the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee.

At the outset, I would like to emphasize that the Attorney General fully supports the President's decision to issue Executive Order 12333 on U.S. intelligence activities and Executive Order 12334 continuing the President's Intelligence Oversight Board.

These two orders replace Executive Order 12036, which was adopted in the last administration. The new orders are shorter, simpler, and designed to increase the effectiveness of lawful intelligence practices.

The Attorney General believes that the new orders strike a more reasonable balance between the need for essential intelligence and respect for civil liberties.

Under the new orders, the Attorney General will continue to have a substantial role in reviewing, authorizing, and overseeing U.S. intelligence activities.

He will review covert operations and other sensitive activities that raise significant legal questions.

He will decide on a case-by-case basis whether to approve the use of certain intrusive techniques in the United States or targeted at Americans abroad.

He will be involved in developing procedures to guide the conduct of intelligence activities that could have an impact upon Americans.

He will receive and investigate reports of possible violations of law by intelligence agency employees and other persons.

The Attorney General is satisfied that the new orders provide him with ample authority to insure that intelligence activities are conducted in a lawful manner and with due regard for the liberties of Americans.

In addition to his communitywide responsibilities, the Attorney General supervises the Federal Bureau of Investigation. FBI has

primary responsibility for the conduct of counterintelligence activities in the United States and coordinates such activities that are conducted by other agencies.

The Attorney General believes that the new Executive orders will assist the FBI in countering the growing threat of the KGB and other hostile intelligence service activities directed at the United States and its citizens.

These two new Executive orders are only part of the Reagan administration's program for revitalizing the U.S. intelligence effort. The new orders will be implemented through revised procedures and guidelines based upon the same philosophy.

The administration is also making available increased resources to the intelligence community and plans to rebuild personnel levels.

Through Executive Order 12331, President Reagan has reestablished the President's Foreign Intelligence Advisory Board which was abolished during the prior administration.

Under the chairmanship of Ambassador Anne Armstrong, this board makes available to the President the independent and informed judgment of a number of distinguished Americans.

On behalf of the administration, the Justice Department has proposed amendments to the Freedom of Information Act to improve our ability to protect intelligence sources and methods.

In addition, we support exemption of CIA and other key intelligence agencies from the requirements of that Act.

The administration also supports new legislation that would impose criminal penalties on those who make a practice of ferreting out and exposing the classified identities of our intelligence agents—frequently risking lives as well as our security interests.

Finally, the Justice Department is committed to vigorous enforcement of national security legislation, including laws prohibiting unlawful export of advanced technology and munitions.

That concludes my opening statement, Mr. Chairman.

I would be happy to attempt to answer any questions you have.

Mr. EDWARDS. Thank you very much.

The gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Mr. Willard, how extensive was the consultation of the White House with the agencies affected, and with the appropriate congressional committees? Did the views of these agencies and committees have some impact?

Mr. WILLARD. Yes, sir, they did.

The Executive order went through a large number of drafts, at least 15 or 20, that were developed through a series of working groups involving all of the intelligence agencies including representatives of the Attorney General, and the FBI.

This occurred over a period of time, lasting from January of last year until shortly before the President made his final decision and signed the order.

At the same time there were two rounds of consultation with the congressional intelligence committees. One round occurred in May 1981 regarding an earlier draft of the order, and then in the fall of 1981 a near final draft was circulated to the intelligence committees.

There were a series of briefings and an expression of views. I did an informal tally that of 21 specific recommendations that were made on behalf of groups of members of either the House or Senate intelligence committees, some 17 of those recommendations were adopted in full or in part in the President's final decision on this Executive order.

So, I think it is fair to say in answer to your question that the final product represents, to a great degree, a consensus among the affected agencies, as well as the congressional oversight committees.

Mr. HYDE. Criticism has been made that the Attorney General has yielded authority over domestic intelligence under the new order. Is that so?

Mr. WILLARD. No, sir.

I would like to point out that the term "domestic intelligence" is sometimes used in two quite different senses. The sense in which we use domestic intelligence is to indicate activities that have no foreign connection, and thus do not fall under Executive Order 12333 or any of the President's foreign intelligence powers.

Those domestic intelligence activities are not affected at all by the new intelligence order and continue under the prior system of guidelines.

With regard to foreign intelligence activities that may be conducted in the United States, for example, countering the efforts of KGB agents to engage in espionage in this country, we are satisfied that the new order strengthens the ability of the FBI to deal with that problem and does not in any way limit the Attorney General's powers in this area.

Mr. HYDE. I have no further questions. Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you.

Mr. Washington, the gentleman from Illinois.

Mr. WASHINGTON. Do you want to proceed, Mr. Chairman?

Mr. EDWARDS. For a minute; yes.

The other day Judge Webster, Director of the FBI, was asked in a television interview about the Executive order and about this question of increased CIA activity in the United States. He made the following statement:

The CIA is still expected to conduct its main work abroad, foreign counterintelligence is the responsibility of the FBI in this country. It can only engage in activities which are coordinated with us. That gives us an essential veto power, and under procedures established by the Attorney General that is really the way it has always been.

Mr. Willard, is that an accurate summary of the CIA's new role in the United States and the relationship between the two agencies?

Mr. WILLARD. Yes, sir, it is.

If I might point out, the President emphasized when he signed the new Executive order that the primary job of the CIA is to conduct intelligence activities overseas and to deal with certain foreign persons who come into this country.

The FBI takes primary responsibility for security activities within the United States directed against hostile foreigners and those Americans who seek to do damage to our national security.

So, I think it is very clear that the intent of the President was to preserve the historic division of responsibility that Director Webster alluded to.

Mr. EDWARDS. Well, the order doesn't necessarily say that.

The section on collection of foreign intelligence doesn't refer at all to coordination with the FBI. That is section 2.3(b) and the procedures Director Webster refers to are general procedures referred to in section 2.3 regarding collection, retention, and dissemination of information generally, not to approve or disapprove specific activities.

One can draw the conclusion that no coordination is required and certainly no veto power resides in the FBI when it comes to the collection of foreign intelligence in the United States by the CIA.

Where in the order is this veto power or these restrictions placed on the CIA?

Mr. WILLARD. These restrictions are found in section 1.8 of the order which sets out the duties and responsibilities of CIA.

Section 1.8(a) provides that CIA is authorized to collect, produce, and disseminate foreign intelligence and counterintelligence including information not otherwise available, and states that the collection of foreign intelligence or counterintelligence within the United States shall be coordinated with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General.

This is the same kind of coordination requirement that was imposed under the prior Executive order, and, as applied in the past, this has given FBI control over the kinds of activities CIA conducts in this country.

Mr. EDWARDS. Well, I think it is changed, though. Under previous orders the Attorney General had the obligation to approve or disapprove certain activities, and now the new order doesn't say that. The new order just says "in coordination with."

I don't see any veto power written into that.

Mr. WILLARD. Well, Mr. Chairman, Executive Order 12036, in section 1-801 provides the same language almost exactly. President Carter's order said the collection of information within the United States shall be coordinated with FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General.

Again, the language is about the same. I agree with you there is not the word "veto" in either the Carter order or this order. But the term "coordination" as implemented in past procedures, and as will be implemented in future procedures, gives FBI control over the way these activities are conducted in this country.

Now, when you try to apply that in a concrete instance—it might be more helpful to talk about that—it doesn't always involve exchanging a piece of paper.

For example, if CIA is following a KGB agent in Europe and he hops on a plane and flies to the United States, they would want to keep following him to see what he is up to.

In that instance there would not be time to send a letter to the Director of FBI and have him write back and say, "I approve of your continuing to follow this man."

So, the procedure might set forth categories of activities CIA could conduct without prior notice and approved by FBI. But, for any kind of sensitive or out-of-the-ordinary activity, that kind of prior notice and prior approval has been the practice in the past and we believe will be the practice in the future.

Mr. EDWARDS. Well then, your testimony, Mr. Willard, is that there is no change that has been made in the responsibility of the Attorney General; that in no way whatsoever has the responsibility of the Attorney General for activities, intelligence activities within the United States, been derogated or lessened. Is that correct?

Mr. WILLARD. Well, there have been some changes in the way the Attorney General's authority is conducted. For example, some of the procedures that in the past the Attorney General could adopt unilaterally are now required to be adopted jointly by the Attorney General and the head of the intelligence agency concerned.

Mr. EDWARDS. What if there is a disagreement?

Mr. WILLARD. If there is a disagreement, then as always, the President is the ultimate authority.

Mr. EDWARDS. So, the Attorney General's power has been reduced.

Mr. WILLARD. Well, we believe that under the Carter order it was implicit that the President could always overrule the Attorney General. In that sense I think the new order makes explicit what has always been understood, and that is that the President runs the executive branch.

Mr. EDWARDS. But you have the CIA and the Attorney General both with equal power within the United States, and they have to agree. Otherwise the President has to step in, is that correct?

Mr. WILLARD. It is a little more complicated than that. The Executive order provides that the Attorney General's decision is final if they disagree on legal grounds. If they disagree on policy grounds, then the decision goes to the NSC, which the President chairs, to make a final decision on what kind of procedure should be adopted.

In practice, we don't expect there is going to be much disagreement because we have had a very good working relationship with CIA in this administration. We were able to reach agreement on the kind of Executive order we wanted the President to sign, and I think that we will be able to reach an agreement on the procedures too.

So, what we are really talking about is theory rather than practice.

Mr. EDWARDS. I do understand. I don't think you have explained to me that the Attorney General's power has not been lessened. Where he used to be able to make decisions, now he has to agree with the CIA Director.

Mr. WILLARD. That is correct.

Mr. EDWARDS. Thank you.

Mr. Washington.

Mr. WASHINGTON. Yes, Mr. Chairman.

On page 3, next to the last paragraph, Mr. Willard, you say the administration supports new legislation that would impose criminal penalties on those who make a practice of ferreting out names and so forth.

Are you alluding here to H.R. 4 which was passed by the House?

Mr. WILLARD. Yes, sir.

Mr. WASHINGTON. I am interested in your phrase, "who make a practice." As I recall H.R. 4, it didn't deal with practice, which would lead one to construe intent, but rather, dealt with incidents of disclosure. Is this a departure from H.R. 4?

Mr. WILLARD. The administration supports H.R. 4 as passed by the House. The language in the key section of H.R. 4 that imposes liability speaks of a pattern of activities of exposing covert agents' identities that must be established before criminal sanctions can be imposed.

When I said making a practice, that was another way of stating the language that I think is contained in H.R. 4.

Mr. WASHINGTON. I was under the impression that it dealt with specific instances rather than practices and patterns.

Mr. WILLARD. Subsection (c), which involves people who are not former Government employees with access to classified information, does require that there be a pattern of activities before the criminal penalty can be imposed. Without that showing, prosecution could not be undertaken.

Mr. WASHINGTON. The lack of requirement of intent in H.R. 4, the administration agrees with that?

Mr. WILLARD. We believe there are several requirements of intent in H.R. 4 as passed by the House.

One of the elements does not involve intent, and that is the reason to believe that it would impair or impede U.S. intelligence activities.

The administration supports that wording—although I would point out that there are other provisions in H.R. 4 that do require intent.

In other words, it must be an intentional and knowing disclosure and the person who makes the disclosure must know what he is doing in terms of exposing an agent's identity and the fact that the identity was classified.

Mr. WASHINGTON. That was one of the major areas of opposition to H.R. 4: If intent were lost, the language would be vague, and therefore serious constitutional questions were raised by any number of Members of the House relative to that.

On page 2, the second paragraph of your statement says that the Attorney General will receive and investigate reports of possible violations.

As I understood the Carter order, it dealt with evidence. Does this imply when you say he will receive reports, that he will receive the sum total of the investigation before it is reported or that, will he receive evidence of violations by intelligence agencies?

In other words, who has the onus to put the case together?

Mr. WILLARD. Well, we believe that the responsibility for putting the case together lies with the Justice Department, and that agencies should not be conducting their own law enforcement investigations.

Obviously they have to look into allegations to some extent to see whether they fall under the reporting standard and they have a duty to provide all information that they have in their possession to the Attorney General.

But when it comes to conducting a law enforcement investigation, such as sending agents out in the field to interview people who are not employees of an agency or using other investigatory techniques, we believe that is properly an FBI function and not one an intelligence agency should be engaging in.

Mr. WASHINGTON. So, are you using "reports" synonymous with "evidence"?

Mr. WILLARD. I think the intention of the new order is to provide the same practice as occurred under the old order, and that is for the agency to report the evidence it has obtained internally to the Attorney General, but that it would not go out and try to seek new evidence. Otherwise the agency would be performing a law enforcement function which the National Security Act prohibits the CIA at least from performing.

I don't think the change of wording here was intended to make any change in the practice as it existed under the order.

Mr. WASHINGTON. But there is a change of wording?

Mr. WILLARD. Yes, sir, there is.

Mr. WASHINGTON. I have no further questions.

Mr. EDWARDS. Mr. Sensenbrenner.

Mr. SENSENBRENNER. No questions, Mr. Chairman.

Mr. EDWARDS. Mr. Willard, in the subcommittee's earlier hearings there was some confusion among our witnesses as to the use of warrantless mail openings within the United States and perhaps you can help us clean this up.

The previous order, the Carter order, required a warrant for opening mail in the U.S. postal channels. The new order, the Reagan order, deletes the requirement and elsewhere delegates authority to the Attorney General "to approve warrantless use of investigative techniques otherwise requiring a warrant."

How do you reconcile that provision with the statement in the order that, "nothing in this order shall authorize any activity in violation of the Constitution or statutes of the United States"?

Mr. WILLARD. The Carter order in section 2-205 on mail surveillance provided that no agent within the intelligence community shall open mail or examine envelopes in U.S. postal exchanges except in accordance with applicable statutes and regulations.

The Reagan order says, as you quoted, that the order does not authorize any activities in violation of statutes. So, to the extent that statutes presently govern mail opening or other practices involving U.S. postal channels, those statutes remain in effect, and in fact President Reagan has specifically directed that those statutes continue to be followed.

Also, to the extent that a mail opening in the United States would be considered, it would also be a physical search and CIA, for example, is not allowed to conduct physical searches in the United States.

In addition, the other procedures provided in the order for physical searches would apply to mail opening as well.

Mr. EDWARDS. Well then, you are telling us, Mr. Willard, that there is no authority in the new order to open mail; that they have to get a warrant or don't they have to get a warrant?

Mr. WILLARD. What I am saying is that the application of the new order to this particular question is the same as it was in the

Carter order, and that is that the Government is required to comply with applicable statutes in this area.

Mr. EDWARDS. What are the statutes?

Mr. WILLARD. I don't have the statutes here with me.

If you would like, I will provide more detailed information about them for the record.

Mr. EDWARDS. Don't the statutes require a warrant?

Mr. WILLARD. The application of the statutes is not entirely clear in this area. The precise procedures, of course, would be spelled out in the Attorney General approved procedures under this area.

Mr. EDWARDS. We would appreciate more information on that, and information with regard to the statutes that you referred to.

Ms. LEROY. Are the statutes not clear because there may be some sort of feeling on the part of the executive branch that there is a national security, an unspoken national security exception in those statutes and regulations?

Is that why you are saying it is not clear?

Mr. WILLARD. I don't have the statutes in front of me, so I am not sure exactly what it says.

But I do know that the Carter order did not say that a warrant was required in every case for mail opening. It simply said that mail opening shall be conducted in accordance with the statutes and regulations and that the Reagan order continues the requirement that all activities must be conducted in accordance with applicable statutes.

So, the order is not changing anything in this area.

Now, the interpretation of the statute is another matter. I will be happy to supply that information for the record.

I just want to make the point that the new Executive order really doesn't change what the Executive order previously said in this area.

Mr. EDWARDS. When you do provide that information, would you advise us why the change was made? There must have been some rationale behind making the change from the Carter order to the Reagan order and deleting the requirement for a warrant.

Mr. WILLARD. Again, Mr. Chairman, the Carter order did not have the requirement for a warrant. What it said was that mail opening will be conducted in accordance with applicable statutes and regulations.

The reason the change was made was that the new order combined a number of separate provisions in the Carter order regarding particular techniques, such as mail opening, television cameras and other monitoring, physical searches, physical surveillance, and electronic surveillance.

The new order does combine all of those provisions into a single provision for purposes of shortening the order and making it simpler. That new provision is section 2.4 on collection techniques.

It basically provides that agencies should use the least intrusive techniques feasible and that the use of these techniques would be governed by procedures approved by the Attorney General.

So, what we have done is taken a laundry list of separate provisions and combined them into one. That was the reason for the change.

Mr. EDWARDS. Well, thank you.

Then what you are explaining to us is that under the new order there is no increase in the CIA or any other agency—except for the FBI—no increase in the CIA's power or authority to open mail than it has under the old order, within the United States. Is that correct?

Mr. WILLARD. That is correct, Mr. Chairman.

Mr. EDWARDS. No new authority.

Mr. WILLARD. Except for the one limited exception mentioned in section 2.4, no agency other than FBI is permitted to conduct an unconsented physical search in the United States, and mail opening would be an unconsented physical search.

Mr. EDWARDS. Counsel.

Ms. LEROY. What about the implementing procedures in the Carter order? Did they shed any more light on that administration's view of mail openings? Did they place any further restrictions or explanations on when that technique could be used?

Mr. WILLARD. I believe they did, although some of those implementing procedures are classified.

Mr. EDWARDS. Mr. Washington.

Mr. WASHINGTON. I have no further questions.

Mr. EDWARDS. Mr. Hyde.

Mr. HYDE. I have no further questions.

Mr. EDWARDS. Mr. Willard, under the old order covert activities by the CIA are limited to activities conducted abroad. Now, this limitation is deleted in the new Reagan order, so presumably the CIA can now engage in covert activities here in the United States. Is that correct?

Mr. WILLARD. I would like to point out though, Mr. Chairman, at the same time that that limitation was removed a new safeguard was put into the Reagan order that was not found in the Carter order. It provides that special activities may not be intended to influence U.S. political processes, public opinion policies or media.

Mr. HYDE. That was not in the Carter order?

Mr. WILLARD. That was not. The Reagan order inserted a new protection that the Carter order did not have, which applies to covert action, conducted both in the United States and abroad.

The precise reason for this change is one I cannot discuss because it involves getting into some classified information.

It was discussed in detail with both the House and Senate Intelligence Committees at the time of the consultation and there was no objection expressed to the change in this definition after they were aware of the facts that supported it.

Obviously this is a sensitive area, and one where the administration is not moving lightly, but there are good reasons for the change. We have attempted to balance the change in one direction by adding an extra safeguard in another direction to insure that the civil liberties of Americans would be protected.

Mr. EDWARDS. Give us some hypothetical covert actions that the CIA might be able to do in the United States that they cannot do now. I am sure you are going to be careful about any classified information, as we always are.

Apparently they are going to be able to do some covert actions in the United States where they could not do it before. Is that correct?

Mr. WILLARD. Yes, Mr. Chairman. That is the purpose of the change.

I am afraid I cannot get into hypothetical situations in this area because of its sensitivity.

I have struggled with that because it has been a difficult concept to explain in public. I have tried to see if I could come up with an explanation that I could give without getting into a classified area, and I cannot.

Mr. EDWARDS. I understand that.

Up until this new order only the FBI could do this type of covert activity. Now, however, we have new authority for the CIA to engage in covert activities within the continental limits of the United States?

Mr. WILLARD. Yes, sir, that is a new provision.

Mr. EDWARDS. Now, who is going to make sure that these are OK, that these actions are appropriate? Here we have a secret organization with secret personnel, a secret budget, doing covert work within the United States. Where are the safeguards?

Mr. WILLARD. The first safeguard is provided in section 1.2(b) which provides that the National Security Council, or a committee established by it, shall consider and submit to the President a policy recommendation including all dissents on each special activity and shall review proposals for other sensitive intelligence operations.

So, the first safeguard we have is high-level executive branch review of proposals for covert activity.

The other safeguard we have is congressional oversight. Section 3.1 provides that any special activity as defined in the Executive order, including those that may be conducted within the United States, are subject to the reporting requirements of the Hughes-Ryan amendment and therefore would be reported to the House and Senate Intelligence Committees as provided by statute.

So, we have congressional oversight as well as the Executive safeguard.

Mr. EDWARDS. Up to now, up to this order, the Attorney General, who we consider one of the guards of our liberties in the United States, as the chief law enforcement officer, has had the power to say, no, you cannot do it, you cannot have this covert activity going on in the United States, but now under this new order the safeguards of the Attorney General are really not there. He can complain, but he doesn't have any veto power. Your safeguards are going to the Intelligence Committee or the administration, is that correct?

Mr. WILLARD. That is true—although the Attorney General's power in past administrations was as an instrument of the President. The President is the only official in the executive branch who has ultimate control, and the Attorney General acts on his behalf. So, it may have been an overstatement to say that previously the Attorney General could veto something, because in all of his functions the Attorney General is responsive to the President, who is ultimately responsible for everything that happens in the executive branch.

Mr. EDWARDS. So, if the Attorney General thinks people's rights are being violated by the CIA in this new authority as far as covert

action and he tries to stop it, he has to get the President's permission.

Mr. WILLARD. Yes, sir, that is correct, but I think that was, in fact, the case in prior administrations as well—whatever formal mechanisms may have been set up.

Mr. EDWARDS. I am afraid I might disagree with you, sir. The FBI, in its covert activities—if the Attorney General told them to stop, they would stop, and the FBI would never go to the President.

Mr. SENSENBRENNER.

Mr. SENSENBRENNER. No questions.

Mr. EDWARDS. Mr. Washington.

Mr. WASHINGTON. No questions.

Mr. EDWARDS. Mr. Hyde.

Mr. HYDE. Did you have something you wanted to say in response to the chairman's last remark?

Mr. WILLARD. No, sir. I think I have already responded.

Mr. HYDE. I have trouble finding out what the problem is here.

A man works for the U.S. Government. He is trained in surveillance. He carries a wallet, and he has a card in it with his picture. One card says FBI and the other says CIA. What is the problem with, say, a known agent of the Red Brigade getting on a plane in Rome and coming over here to Dulles, and the CIA following him because we are worried about one of our agents who is still alive, we hope—what is the big problem with this CIA man continuing to follow him?

Maybe he doesn't get a chance to get to the telephone to call the FBI and meet someone on the street corner and brief him, by saying, "There he goes," and then they switch and the other man follows him. I don't understand the problem.

Do you understand it?

Mr. WILLARD. Well, your example is similar to the hypothetical situation I described earlier. I think in a situation like that there has to be some room around the edges.

We live in a world of multinational problems. We have international terrorism; we have international narcotics trafficking; we have international traffic in armaments and high technology.

We have many problems that cross national borders.

Mr. HYDE. This new order is really insensitive to the turf struggles of the bureaucracy. I mean this is FBI turf and not CIA. While you are all working for the same Government, you get the same paychecks, your initials are different, so we have to switch.

I just don't understand it. It seems to me foolish not to provide coordination instead of being at odds with each other.

Won't this new Executive order facilitate the coordination and the continuity of national security investigations?

Mr. WILLARD. Yes, sir, that was our purpose, was to reaffirm the historic division of responsibility that FBI primarily operates at home and CIA primarily abroad, but to recognize there are gray areas where the responsibilities overlap and give them a little more flexibility in those areas.

I would like to point out also that while I am very proud of the FBI and its fine record, FBI and CIA both have a history in the past of having engaged in some abuses of their powers. To suggest that CIA had Operation CHAOS without remembering that FBI

had Operation COINTELPRO is to take a one-sided view of this history.

I think both agencies have learned their lessons and are now committed to conducting their activities in a lawful manner. But I don't think that somehow the FBI is pure and the CIA is not, and there has been some of that suggested in the public criticism of this new order.

I don't think it is really warranted by the record.

Mr. HYDE. In a world of fast communication and of increasing sophistication, it would seem to me we should remove roadblocks to the acquisition of essential information so we may be informed as to what our adversaries, not to say enemies, are doing.

The consultation with Congress is new then, isn't it, in this? In other words, now we are bringing in Congress through its intelligence committees, in a greater way than we have under previous administrations. Is that not so?

Mr. WILLARD. Certainly we are committed to cooperating fully with the congressional intelligence committees and I think the consultation on the Executive order is a good example of that.

Mr. HYDE. And two committees ought to be enough. Of course, that is a judgment call, I guess, we don't need the Appropriations Committees and the Judiciary Committees of both chambers, et cetera.

Isn't that one of the problems we had before, that we were treating it like the energy problem, with endless committee attention to these matters, and getting nowhere?

Mr. WILLARD. I would not want to presume to instruct the House of Representatives how best to organize its business. However, from the standpoint of the executive branch it is more convenient to have a clear line of oversight with one committee in each House than what happened before with six or eight committees that had pieces of the intelligence jurisdiction.

I think sometimes responsibility that is assigned to many people ends up being no one's responsibility, and that the intelligence committees now exercise very effective oversight.

Mr. HYDE. It sounds like a Government program to me.

Thank you, Mr. Chairman.

Mr. EDWARDS. Well, to paraphrase a great Englishman, this committee was not established to preside over the dissolution of the Justice Department.

Mr. Willard, when the CIA was established in 1947, Congress was emphatic in stating that it did not want a secret internationally operating organization that necessarily had to do some rather disagreeable, perhaps illegal things overseas with a secret budget, secret personnel, to be operating within the United States with Americans involved.

They saw a great danger in that.

Do you share that view, that Congress and the Executive in 1947 obviously adhered to?

Mr. WILLARD. In large part, yes, Mr. Chairman.

The National Security Act does contain provisions that say that CIA is not supposed to engage in law enforcement or internal security functions. But even then I think the Congress recognized that we did not live in a world of fortress America where we could draw

a straight line and say this is domestic and this is foreign. We think there is room for CIA to conduct certain kinds of activities primarily involving foreigners who come to this country without violating the National Security Act.

I think that has always been the practice. However, we recognized the very real concern that you have voiced and I think it is reaffirmed in this Executive order, that FBI is the primary agency to operate in the United States and CIA's primary mission is abroad.

Mr. EDWARDS. Mr. Willard, you talked about the safeguards in reporting to the intelligence committees. What happens if the intelligence committees object to a particular covert action and the CIA chooses to ignore the objection?

Mr. WILLARD. Ultimately the conduct of that kind of activity is the responsibility of the President.

In view of the relationship that now exists with the congressional oversight committees, I think their opinions will be very much carefully considered, if nothing else, for the very practical reason of their voice with regard to appropriations—a power that Congress does have—and its ultimate check on the way intelligence activities are conducted.

So, it is in the agency's own self-interest to see that congressional concerns are satisfied. But when it comes down to a particular operation, I think that is a judgment that should be entrusted to the executive branch and is.

I hope that we don't have a situation where we end up in complete disagreement with oversight committees, but if it does occur in a specific case, I think the President's judgment would have to prevail.

Mr. EDWARDS. Thank you.

Mr. Willard, in our earlier hearings the issue was brought up regarding the provision dealing with assistance to local police, local law enforcement.

Under the Carter order such assistance was limited primarily to the FBI and only when expressly authorized by law.

Under the new order, the Reagan order, assistance from all intelligence agencies is permitted unless specifically precluded by applicable law.

Now, what kind of a change is contemplated here?

Mr. WILLARD. I don't think this change will make much difference in practice. The new provision is shorter. It is organized in different fashion than the Carter order.

Basically we are talking about section 2.6, and sections 2.6 (a), (b), and (c) pretty well set out the kinds of assistance that CIA or the military services can lawfully provide to local law enforcement authorities. The National Security Act proviso that I mentioned earlier, or the Posse Comitatus Act, would generally prohibit other forms of assistance by CIA or the military services. But, we didn't want to write this language in concrete in case we were presented with a situation where the statutes would allow assistance and the Executive order would not.

That is why there is leeway under the Executive order, but I don't think it will make much of a practical difference.

Mr. EDWARDS. Under the old order the FBI would deal with the police and under the new order the CIA can go and make a deal with the local police.

Mr. WILLARD. Under the old order CIA was authorized to assist local law enforcement agencies in three enumerated sections which are preserved in pretty much the same terms under the new order, sections 2.6 (a), (b), and (c).

The new order says in (d) that the agencies may render any other assistance in cooperation with law enforcement authorities not precluded by applicable law. This allows agencies such as FBI to, as they did before, render any other assistance they think is appropriate. I don't think this extra authority will mean much in the way of a practical difference for CIA or the military services because the Posse Comitatus Act and the National Security Act will limit their ability to engage in law enforcement activities.

Mr. EDWARDS. There must have been some rationale for making the change. I am sure you are correct. It is difficult to reconcile that with the National Security Act's prohibition against the CIA performing any law enforcement function.

Why was the change made?

Mr. WILLARD. The best explanation I can give is that we didn't want to have the situation where in a particular case we might determine that the National Security Act would permit the activity, but then someone would say, "Oh, what about the Executive order?"

In other words, the idea was for the Executive order to be no more restrictive than the National Security Act already is.

If you want an example, I cannot think of any assistance that CIA could engage in under the new order they couldn't under the old order, but we didn't want to preclude the possibility of permitting that activity if an example did come up.

Mr. EDWARDS. Thank you.

Ms. LEROY. Mr. Willard, I would like to pursue the question that Mr. Hyde was asking you a few minutes ago, and with a view toward suggesting that there is something more at stake here than just a turf battle between the FBI and the CIA. To do that I would like to read something to you that was said at a previous hearing by CIA Director Stansfield Turner.

Just bear with me while I read it. I want you to comment afterward.

Admiral Turner suggested that the new arrangement created by the new Executive order, apart from any question of added intrusion into the lives of Americans, raised concerns to him, and the reason for that concern was that Central Intelligence Agency officers are not trained, and I am quoting him:

To operate within the law inside the United States. FBI officers, when given a new assignment, ask "what are the limitations of law that limit what I can do to accomplish my objective?" The Central Intelligence Agency officer is accustomed to working overseas and has an innate reaction, "how do I get the job done?" I don't believe we want to start training CIA officers in the intricacies of American law any more than is absolutely necessary. They are already burdened with a great many legal issues with respect to Americans overseas. But you can only train a person in so many things at a time. If you take lots of time to train them in what the FBI must be trained for, you are going to detract from their training to do their basic problem in the overseas environment. Because the CIA is not geared to do this, you

are doing them a disservice if you force them into the position of having to make difficult choices based on American law. In doing so, you run the risk that they will make a mistake. We will have another series of investigations and scandals, and we will do very serious and permanent damage to the CIA.

Mr. Willard, I would like you to respond to that; and also to ask you what steps the administration is taking to make sure that that kind of situation doesn't arise.

Mr. WILLARD. Admiral Turner's comments might have had more force 20 years ago, but today CIA agents operate under a great deal of legal restraints abroad. There are many Americans abroad, as he mentioned in his statement.

CIA must respect their constitutional rights abroad now just as if they were in the United States. This, in effect, means that we have come to a point now where American law—the Constitution, the Executive order and regulations—create this kind of legal constraint worldwide in intelligence operations.

CIA agents abroad are no more free to get the job done and who cares how many FBI agents are free to do that in the United States?

I think also that no one is forcing CIA to engage in any large number of activities in the United States now, as opposed to what they were doing when Admiral Turner was the DCI.

The changes are very marginal in this order. They are primarily designed to promote a more cooperative attitude and better coordination between the two agencies and more flexibility. There is no great turnover of responsibility from FBI to CIA.

There is no shift of budgets; there is no shift of personnel. What we are really talking about is making the regulations a little less foolishly restrictive.

An example might be provided by the new authority in this order for CIA to search personal property of non-U.S. persons lawfully in its possession.

This authority was not present under the Carter order, and CIA was placed in a situation where if they had such personal property, a briefcase, an envelope, or something, they had the choice of either taking it to FBI and asking FBI to open it if they thought FBI had the technical capability or putting it on an airplane, flying it outside the territorial limits of the United States, opening it, searching it, sealing it back up and then flying it back to the United States.

That is the kind of onerous restriction that proved to be troublesome.

Ms. LEROY. How onerous is it to drive it across the street to the FBI? How onerous is it to detail FBI agents to work with CIA?

Mr. WILLARD. It would depend on whether the FBI happened to have an expert in opening packages or envelopes across the street on duty at the time.

Our feeling is, if the restrictions serve a useful purpose in protecting civil liberties, that is one thing. If they just perpetuate bureaucratic in-fighting or turf lines, that is not a good reason to have them.

I think CIA and FBI have a good working relationship now and I don't agree with Admiral Turner that the new order is going to endanger that working relationship in any way.

Ms. LEROY. You said initially in response to his comments that the CIA is well versed in legal questions having to do with rights of Americans abroad because they are, I think you said, basically the same as rights of Americans here.

Is that in fact accurate, and does the new order reflect that similarity? I understand that the order in fact does treat American citizens abroad somewhat differently. I would like to ask you what the legal justification for that is.

Mr. WILLARD. Insofar as fourth amendment techniques, the only difference between Americans abroad and in the United States is caused by the Foreign Intelligence Surveillance Act of 1978, which applies to electronic surveillance in the United States, but not abroad.

As a result, the way of approving those kinds of surveillances is different. The basic standard—the agent of a foreign power standard—is the same both in the United States and abroad, and that is for electronic surveillance or any other search.

Ms. LEROY. But doesn't the Reagan order permit physical surveillance abroad to collect foreign intelligence when it is to obtain significant information that cannot reasonably be acquired by other means?

Mr. WILLARD. Yes; in fact that is an example of how the Americans abroad have more protection.

In the United States FBI can conduct physical surveillance of Americans without having to make any kind of showing whatsoever.

Mr. EDWARDS. But under the Levi guidelines.

Mr. WILLARD. If you are referring to the Levi domestic security guidelines, they don't apply to foreign intelligence or counterintelligence investigations.

Ms. LEROY. Is it accurate to say that the CIA could follow an American businessman, for example, without restriction simply because he has information about technological development in Third World countries, because his business travels took him to those countries, and he was working with them on certain technological developments?

Mr. WILLARD. The example you have given me would be an example of physical surveillance to collect foreign intelligence.

In order for that kind of surveillance to be conducted, there would have to be a determination that the information was significant and that it could not reasonably be acquired by other means.

I would like to point out physical surveillance is not a fourth amendment technique.

The courts have held you do not have a constitutional right to avoid physical surveillance in a public place. It doesn't require a warrant; it doesn't require probable cause; it doesn't require any kind of showing. Any police officer anywhere in the United States can conduct physical surveillance of anyone he chooses in a public place.

There is some limitation here on the use of this technique against Americans abroad, but this is an example where the Executive order provides far greater protection than is required by the Constitution or statutes of the United States.

Mr. EDWARDS. But the Carter order said if an American citizen is traveling overseas, the CIA cannot put him under surveillance unless he is a person reasonably believed to be acting on behalf of a former power or a former employer.

Now, according to the Reagan order, an American businessman can be put under physical surveillance overseas as a part of any counterintelligence or sources and methods investigation "to obtain significant information that cannot reasonably be acquired by other means."

That lowers the standards considerably, doesn't it?

Mr. WILLARD. Yes, Mr. Chairman; it does.

I think this is an example of an appropriate lessening of restrictions that were unnecessary, that were not required by the Constitution or laws of the United States.

Mr. EDWARDS. Who makes the finding—and is it in writing—that the surveillance of this American businessman is necessary to obtain significant information, and so forth?

Mr. WILLARD. That would have to be set forth in the procedures that have not yet been adopted.

Mr. EDWARDS. Will there be a paper trail made, a written finding that could be audited here and there, or will the CIA agent himself make a mental finding?

Mr. WILLARD. I hope there won't have to be a paper trail because that is one of the problems we encountered under the Carter order. People were so busy creating paper they were not conducting intelligence activities.

But that decision has not been made. The procedure has not been finalized for this section, so it is possible a paper trail would be required.

Mr. EDWARDS. But many more businessmen can be put under surveillance under this order than under the Carter order.

Mr. WILLARD. Yes, Mr. Chairman, that is true.

Mr. EDWARDS. Mr. Kastenmeier.

Mr. KASTENMEIER. I hope there will be a so-called paper trail. Without it there is no accountability. That is one of the problems.

Mr. EDWARDS. Mr. Hyde.

Mr. HYDE. Very simply, following up on Admiral Turner's concern that the CIA agent would find it difficult to grasp a 1-day seminar on the law of surveillance in the United States, which most city police understand, do you share his view, his dim view that CIA agents are noneducatable, and would not be able to grasp these esoteric, arcane principles in a seminar?

Mr. EDWARDS. Are you referring to my dim view?

Mr. HYDE. No; Admiral Turner's dim view.

Don, you don't have a dim view. You are very enlightened, but Admiral Turner seemed to think his boys would have difficulty grasping this, that they have too much on their minds to get into this very bewildering field.

I wonder what you think.

Mr. WILLARD. In my experience, Mr. Hyde, the CIA people I have met are very bright. Of course, I think the same of FBI. I would not want to try to compare the two, but I think they are both equally capable of observing legal requirements and are required to

do so by the Carter order as well as this order, when their activities might infringe on the liberties of Americans.

Mr. HYDE. Admiral Turner didn't think the President should consult with Congress at all. He felt that was putting the cart before the horse.

This administration feels it should consult with Congress, to wit, the House and Senate Intelligence Committees, which are bipartisan.

Which of those two approaches augurs best for wise intelligence activities?

Mr. WILLARD. I have to say, Mr. Hyde, I simply could not understand the basis for Admiral Turner's criticism of the administration on that account.

Certainly the members of the Intelligence Committees seem to be very pleased to be consulted and also pleased that many of their views were taken into account before the President made his final decision on this Executive order.

We have to work together in this area. I appreciate being invited to appear today before this hearing because I recognize that the members of this committee have a very serious interest in the rights of Americans. I think that the new order protects those rights and does not authorize any conduct that would be unlawful or contrary to the Constitution in any way. We are committed to that. We have learned, I think, from mistakes of the past. We think that a combination of careful attention to legal requirements and careful oversight by the congressional intelligence committees will help us to avoid repeating them.

Mr. HYDE. I thought that was a historic statement. It was inadequately noticed by the media, but maybe historians will note that a high official in the immediate past administration was sharply critical of this President for too much consultation with Congress. I think that is a gem which ought not to go unremarked. I certainly shall never forget it. Thank you.

Mr. EDWARDS. Mr. Kastenmeier.

Mr. KASTENMEIER. No questions.

Mr. EDWARDS. Mrs. Schroeder.

Mrs. SCHROEDER. I have no questions.

Mr. EDWARDS. Counsel.

Ms. LEROY. I would like to get back to my businessman traveling in Third World countries. Physical surveillance is one technique that is available to the CIA to obtain foreign intelligence information. What other techniques are available?

For example, would it be possible for a CIA agent to pose as a journalist, say a writer for a business magazine, and attempt to interview him about his travels? Would that be possible?

Mr. WILLARD. Sure.

Ms. LEROY. Would it be possible for the CIA to approach some friends or colleagues of the businessman and try and get them to elicit information, assuming that the friends or colleagues were more cooperative?

Mr. WILLARD. Yes.

Ms. LEROY. Would it be possible if the businessman attended a meeting and took notes of the meeting and brought the notes back to his hotel room, would it be possible for the CIA to break into his

hotel room and photocopy the notes if they felt they contained significant foreign intelligence?

Mr. WILLARD. No.

Ms. LEROY. Would it be possible for them to do that here in this country? Physical searches? Under what circumstances are physical searches permitted in this country?

Mr. WILLARD. For physical searches the standard in this country and abroad is basically the same.

That is, they may only be directed at a person if the Attorney General finds there is probable cause to believe that the target is a foreign power, or an agent of a foreign power.

Ms. LEROY. I would like to also ask you a couple of questions about collection of foreign intelligence here in the United States. That section of the new order has been the cause of some controversy as I am sure you know.

The Carter order limited collection of foreign intelligence in the United States by agencies other than the FBI primarily to information acquired from cooperating sources, to commercial or business information, or to situations where the target was reasonably believed to be acting on behalf of a foreign power.

Is that more or less accurate?

Mr. WILLARD. I believe that is correct.

Ms. LEROY. The Reagan order permits the CIA and other intelligence agencies to collect significant foreign intelligence. Is that the primary change?

Mr. WILLARD. No; actually what we have done is, we have changed it in several ways, some of which make it easier, and some of which make it harder to collect foreign intelligence concerning U.S. persons.

For an agency other than, FBI to collect such foreign intelligence in the United States, they must determine that it is significant. However, they are not permitted, whether it is significant or not, to collect such foreign intelligence for the purpose of acquiring information concerning the domestic activities of U.S. persons.

By contrast, the Carter order provided that commercial information, whatever that means, may be collected but not anything else. We have tried to draw a different line, one that says that significant foreign intelligence may be collected, but not information concerning the domestic activities of U.S. persons.

We thought that responded better to the kinds of civil liberties concerns that people were voicing, than the kind of line that was drawn in the Carter order.

Ms. LEROY. Could you give us some examples of what sorts of individuals might hold significant foreign intelligence?

Mr. WILLARD. I think the example provided by the ACLU witnesses in the subcommittee's hearing last month was an accurate example. They supposed that an American had been traveling in Iran while the hostages were there, and he came back and did not want to tell the CIA what he saw, but was happy to talk to journalists and reporters.

The CIA could ask one of those journalists and reporters to go and find out what the guy saw, and report what he observed in Iran. The ACLU witnesses correctly pointed out that is the kind of

activity that would have been prohibited under the Carter order but is permitted under this order.

Another example would be that the Carter order would allow the use of such techniques to collect commercial information in the United States without limits, including activities about the commercial activities of Americans or American businesses in the United States. That kind of collection would be prohibited under the new order, which prohibits collection about the domestic activities of U.S. persons.

So, what we have done here is to draw a different line. We think the line we have drawn is one that does a better job of protecting the true civil liberties concerns while giving the CIA more flexibility in areas where it needs it.

Ms. LEROY. What techniques are available now under the new order for the CIA to collect significant foreign intelligence and what techniques are not available?

Mr. WILLARD. It is probably easier to start talking about what techniques are not available. CIA is not permitted to conduct electronic surveillance, unconsented physical searches or physical surveillance—shadowing—in the United States, except for a few very limited circumstances which are by and large the same as they were under the Carter order.

CIA is also not permitted to infiltrate domestic organizations, except under limited circumstances which are the same as provided in the Carter order. So, the most intrusive techniques are prohibited to CIA under the new order.

In addition, the CIA is not permitted to collect foreign intelligence in the United States for the purpose of acquiring information about the domestic activities of Americans. So, those are all limits.

Now, what is left is permitted the CIA, although again all of its foreign intelligence activities in the United States must be coordinated with FBI pursuant to procedures approved by the Attorney General.

Ms. LEROY. I would like to be a little more specific. Do those techniques include, for example, pretext interviews?

Mr. WILLARD. Yes.

Ms. LEROY. Access to third party records?

Mr. WILLARD. Well, that is a complicated subject. It depends on what kind of records you are talking about. If you are talking about tax records—

Ms. LEROY. Bank records, credit records, medical records.

Mr. WILLARD. OK. The Internal Revenue Code prohibits the use of tax returns in intelligence investigations. That is not affected by the new Executive order. However, the new administration supports legislation that would change that law.

The Right to Financial Privacy Act permits but does not require financial institutions to disclose records to authorized intelligence agencies. So, in this case if the bank was willing to cooperate with CIA, it could obtain the records, but if the bank didn't want to, CIA could not compel the bank to provide that information.

With regard to academic records, the Family Educational Rights and Privacy Act of 1974 prohibits academic institutions from disclosing student records for intelligence investigations without writ-

ten consent. That prohibition is not affected by the new Executive order.

There is no Federal statute on medical or telephone records. There may be some State statutes, but aside from what they may provide, as a matter of Federal law, if the holder of those records is willing to turn them over to CIA and CIA complies with all the other requirements I have mentioned, those records could be obtained.

I think that covers the categories you were talking about.

Ms. LEROY. Well, I suppose part of how you view this particular section depends a lot on what you think the word "significant" means, and how you think the administration is going to define it.

How do you suppose the distinction between significant and insignificant will be made, and who is going to get to decide? I have read CIA reports and documents—unclassified ones—that make statements to the effect that no piece of intelligence is ever insignificant because it all is part of the giant puzzle.

If that in fact is the attitude, I can envision a situation where everything becomes significant and nothing is insignificant, and CIA basically, or the other intelligence agencies—I don't mean to keep simply using them, but it is a convenient shorthand—can get involved in just about anything.

How is that going to work?

Mr. WILLARD. I guess I have to disagree with you. I don't think that the word "significant" is a particularly important restriction in this Executive order. I think the other restrictions are much more important in protecting civil liberties. Obviously "significant" cannot be defined in a way that it becomes meaningless and that anything is regarded as significant.

There has to be some test for deciding what is important and what is not, but I don't think that is the real protection here. The real protections can be summarized in three categories.

First, CIA can only conduct foreign intelligence activities in the United States in coordination with FBI, pursuant to Attorney General-approved procedures.

Second, information they collect about Americans in the United States for foreign intelligence purposes cannot concern the domestic activities of those Americans.

For example, when you are talking about medical records or bank records or whatever, if it is a foreign intelligence investigation, CIA could not collect records concerning the domestic activities of a U.S. person or corporation.

If you are talking about medical records of a foreigner in the United States that is another matter.

Finally, there is the limitation on techniques. I think you are correct in observing that some techniques, such as pretext interviews or access to third party records, are available to CIA if they meet all the other requirements. However, CIA is not allowed to use the heavy artillery. They cannot engage in electronic surveillance, physical searches, shadowing, or infiltration of organizations except under a few very limited circumstances similar to what the Carter order provided.

In summary, I agree that the term "significant" is very slippery. If that were the only protection in this order, I would be very un-

comfortable. But I think the other protections are much more significant.

Mr. EDWARDS. Mr. Willard, you described quite an increase in the acceptable authorized activities of the CIA, not only in the United States, but overseas.

What was the background to the discussions leading to apparently their request—or the Director of the CIA's request—that these authorizations for more jurisdiction be granted to the CIA?

Was there discussion that FBI was not cooperating within the United States or something like that?

Mr. WILLARD. I cannot get into the specific background because it involves classified information about particular intelligence activities.

Many of the changes were made in response to particular problems that developed over the last few years. A particular operation that CIA wanted to engage in, for example, was found by the Justice Department to be unlawful because it is contrary to the Executive order or one of the regulations, and was not able to be conducted. By the time the Reagan administration arrived, they had developed a sort of laundry list of problems they had encountered.

Some of them we were not able to solve and they are still there, but we tried to rewrite the order in a way that would allow those that we could solve to be solved.

There is no overall plan to change the nature of CIA activities and there is no shift of budget and no shift of personnel. I don't think it is really fair to say that there is a shift of jurisdiction from FBI to CIA.

The purpose of the new order was really to provide a little more flexibility that will be used only in occasional cases. It is not going to change with the day-to-day activities of 99 percent of the CIA or FBI agents involved in intelligence work.

Mr. EDWARDS. You would not be disturbed if you were the Attorney General or the Director of the FBI; you would welcome this new partnership?

Mr. WILLARD. Not only would I, but they do. The Attorney General fully supports this Executive order and so does the Director of the FBI.

Mr. EDWARDS. Or else?

Mr. Kastenmeier.

Mr. KASTENMEIER. I have no questions.

Mrs. SCHROEDER. No questions.

Mr. HYDE. On behalf of my constituents, we welcome it too.

Ms. LEROY. I am still not comfortable about the word "significant." I am not so much concerned about how you define it right now. I am concerned about the decisionmaking process that is going to go on in the future in terms of who decides according to what standards; what happens if there is a conflict; that kind of thing. Just how is it going to work?

Mr. WILLARD. I hope that the decision will be made as informally as possible and at the lowest level possible, and that we will not have to have an enormous paper trail going all the way to the top of CIA over to the Justice Department and up to NSC every time someone wants to decide whether some piece of information is significant or not.

Ms. LEROY. So, the CIA agent gets to make the decision and do whatever it is he wants to do.

Mr. WILLARD. All this remains to be spelled out in the procedures, so I cannot say what the procedures are going to provide. I hope, though, they are not unnecessarily restrictive, and that this requirement of significance does not turn into something that is overly burdensome from the administrative standpoint.

Ms. LEROY. Are these procedures being drafted now by the agencies and the Attorney General?

Mr. WILLARD. Yes; they are. As the Executive order provides, the procedures are developed in the first instance by the agency head concerned, and approved by the Attorney General.

Ms. LEROY. Do you know at what stage the agencies are in that process? I guess I am asking for some kind of timetable as to when the initial drafts might be completed and sent to the Attorney General.

Mr. WILLARD. The Executive order requires that new procedures be adopted as expeditiously as possible.

It also provides that procedures adopted under the Carter order remain in place until the new procedures are adopted, so we have a real incentive to get moving.

None of the particular agency procedures have been finally approved by the agency head and sent to the Attorney General for approval yet, but we are hoping it will be done in the very near future.

Ms. LEROY. Is it the plan of the administration to make those procedures available to the House and Senate Intelligence Committees prior to their implementation for review and comment?

Mr. WILLARD. No; it is not. The procedures, however, will be provided, both classified and unclassified portions, to the Intelligence Committees as provided in the Executive order.

Ms. LEROY. Have the two Intelligence Committees been apprised of that?

Mr. WILLARD. Yes.

Ms. LEROY. And are they happy with that arrangement?

Mr. WILLARD. I think they will have to speak for themselves.

Ms. LEROY. As part of the process, is it contemplated that the FBI domestic security and foreign counterintelligence guidelines will be reexamined and possibly changed?

Mr. WILLARD. The foreign counterintelligence guidelines are the ones that implement this Executive order. They are being revised to reflect the changes in the Executive order.

The domestic security guidelines are separate; they don't involve foreign intelligence or foreign counterintelligence and so they are not part of this Executive order process.

Ms. LEROY. When those foreign counterintelligence guidelines were initially drafted in the Ford administration, the Attorney General worked with this committee in formulating those guidelines and shared them with this committee prior to their implementation.

Is it the plan of the Attorney General to do that in this case?

Mr. WILLARD. No; it is not.

Ms. LEROY. Thank you. I have no further questions.

Mr. EDWARDS. Mr. Willard, was Richard Allen heavily involved in the writing of this Executive order?

Mr. WILLARD. His office was heavily involved. I wouldn't want to try to characterize which person sat in on which meeting, and that sort of thing, but obviously his staff was involved in this over a great period of time.

Mr. EDWARDS. Are you rewriting the domestic intelligence, domestic security guidelines?

Mr. WILLARD. The question of whether revision of those is needed is under consideration now in the Department and a final decision has not yet been made by the Attorney General.

Mr. EDWARDS. Are there further questions?

Mr. KASTENMEIER. Mr. Chairman.

Mr. EDWARDS. Mr. Kastenmeier.

Mr. KASTENMEIER. I may not agree with or like the thrust of some of the answers the witness has given, but I do want to compliment him on being very knowledgeable and forthcoming. I think he has been an excellent witness on behalf of the Department.

Mr. WILLARD. Thank you, sir.

Mr. EDWARDS. We thank the witness also and thank the Department for sending you here today, Mr. Willard.

If there are no further questions, we will adjourn the meeting. Thank you.

[Whereupon, at 11:05 a.m., the subcommittee was adjourned.]

APPENDIXES

APPENDIX 1

PROPOSED EXECUTIVE ORDER

United States Intelligence Activities

Timely and accurate information about the activities, capabilities, plans, and intentions of foreign powers, organizations, and persons, and their agents, is essential to the national security of the United States. All reasonable and lawful means must be used to ensure that the United States will receive the best intelligence available. For that purpose, by virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the National Security Act of 1947, as amended, and as President of the United States of America, in order to provide for the effective conduct of United States intelligence activities and the protection of constitutional rights, it is hereby ordered as follows:

SECTION 1: Goals, Direction, Duties and Responsibilities with Respect to the National Intelligence Effort

1-1. Goals.

The United States intelligence effort shall provide the President and the National Security Council with the necessary information on which to base decisions concerning the conduct and development of foreign, defense and economic policy, and the protection of United States national interests from foreign security threats. All departments and agencies shall cooperate fully to fulfill this goal.

a. Maximum emphasis should be given to fostering analytical competition among appropriate elements of the Intelligence Community.

b. All means, consistent with applicable United States law and this Order, and with full consideration of the rights of United States persons, shall be used to develop intelligence information for the President and the National Security Council. A balanced approach between technical collection efforts and other means should be maintained and encouraged.

c. Special emphasis should be given to detecting and countering espionage and other threats and activities directed by foreign intelligence services against the United States Government, or United States corporations, establishments, or persons.

d. To the greatest extent possible consistent with applicable United States law and this Order, and with full consideration of the rights of United States persons, all agencies and departments should seek to ensure full and free exchange of information in order to derive maximum benefit from the United States intelligence effort.

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1-2. The National Security Council.

a. Purpose. The National Security Council (NSC) was established by the National Security Act of 1947 to advise the President with respect to the integration of domestic, foreign and military policies relating to the national security. The NSC shall act as the highest Executive Branch entity that provides review of, guidance for and direction to the conduct of all national foreign intelligence, counterintelligence, and special activities, and attendant policies and programs.

b. Committees. The NSC shall establish such committees as may be necessary to carry out its functions and responsibilities under this Order.

1-3. National Foreign Intelligence Advisory Groups.

a. Establishment and Duties. The Director of Central Intelligence shall establish such boards, councils, or groups as required for the purpose of obtaining advice from within the Intelligence Community concerning:

1. production, review and coordination of national foreign intelligence;
2. priorities for the National Foreign Intelligence Program budget;
3. interagency exchanges of foreign intelligence information;
4. arrangements with foreign governments on intelligence matters;
5. protection of intelligence sources and methods;
6. activities of common concern;
7. such other matters as may be referred by the Director of Central Intelligence.

b. Membership. Advisory groups established pursuant to this section shall be chaired by the Director of Central Intelligence or his designated representative and shall consist of senior representatives from organizations within the Intelligence Community and from departments or agencies containing such organizations, as designated by the Director of Central Intelligence. Groups for consideration of substantive intelligence matters will include representatives of organizations involved in the collection, processing and analysis of intelligence. A senior representative of the Secretary of Commerce, the Attorney General, the Assistant to the President for National Security Affairs, and the Office of the Secretary of Defense shall be invited to participate in any group which deals with other than substantive intelligence matters.

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1-4. The Intelligence Community.

The agencies within the Intelligence Community shall, in accordance with applicable United States law and the provisions of this Order, conduct intelligence activities necessary for the conduct of foreign relations and the protection of the national security of the United States, including:

- a. collection of information needed by the President, the National Security Council, the Secretaries of States and Defense, and other Executive Branch officials for the performance of their duties and responsibilities;
- b. production and dissemination of intelligence;
- c. collection of information concerning, and the conduct of activities to protect against, intelligence activities directed against the United States, international terrorist and international narcotics activities, and other hostile activities directed against the United States by foreign powers, organizations, persons, and their agents;
- d. special activities;
- e. administrative and support activities within the United States and abroad necessary for the performance of authorized activities;
- f. such other intelligence activities as the President may direct from time to time.

1-5. Director of Central Intelligence

In order to discharge the duties and responsibilities prescribed by law, the Director of Central Intelligence shall be responsible directly to the President and the NSC and shall:

- a. act as the primary advisor to the President and the NSC on national foreign intelligence and provide the President and other officials in the Executive Branch with national foreign intelligence;
- b. develop such objectives and guidance for the Intelligence Community as will enhance capabilities for responding to expected future needs for national foreign intelligence;
- c. promote the development and maintenance of services of common concern by designated intelligence organizations on behalf of the Intelligence Community;
- d. ensure implementation of special activities;
- e. formulate policies concerning foreign intelligence and counterintelligence arrangements with foreign governments, coordinate foreign intelligence and counterintelligence relationships between agencies of the Intelligence Community and the intelligence or internal security services of foreign governments, and establish procedures governing the conduct of liaison by any department or agency with such services on narcotics activities;

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f. participate in the development of procedures approved by the Attorney General governing criminal narcotics intelligence activities abroad to ensure that these activities are consistent with foreign intelligence programs;

g. ensure the establishment by the Intelligence Community of common security and access standards for managing and handling foreign intelligence systems, information, and products;

h. ensure that programs are developed which protect intelligence sources, methods, and analytical procedures;

i. establish uniform criteria for the determination of relative priorities for the transmission of critical national foreign intelligence, and advise the Secretary of Defense concerning the communications requirements of the Intelligence Community for the transmission of such intelligence;

j. establish appropriate staffs, committees, or other advisory groups to assist in the execution of the Director's responsibilities;

k. have full responsibility for production and dissemination of national foreign intelligence, and authority to levy analytic tasks on department intelligence production organizations, in consultation with those organizations, ensuring that appropriate mechanisms for competitive analysis are developed so that diverse points of view are considered fully and differences of judgment within the Intelligence Community are brought to the attention of national policymakers;

l. ensure the timely exploitation and dissemination of data gathered by national foreign intelligence collection means, and ensure that the resulting intelligence is disseminated immediately to appropriate government entities and military commands;

m. establish mechanisms which translate national foreign intelligence objectives and priorities approved by the NSC into specific guidance for the Intelligence Community, resolve conflicts in tasking priority, provide to departments and agencies having information collection capabilities that are not part of the National Foreign Intelligence Program advisory tasking concerning collection of national foreign intelligence, and provide for the development of plans and arrangements for transfer of required collection tasking authority to the Secretary of Defense when directed by the President;

n. develop, with the advice of the program managers and departments and agencies concerned, the consolidated National Foreign Intelligence Program budget, and present it to the President and the Congress;

o. review and approve all requests for reprogramming National Foreign Intelligence Program funds, in accordance with guidelines established by the Office of Management and Budget;

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p. monitor National Foreign Intelligence Program implementation, and, as necessary, conduct program and performance audits and evaluations;

q. together with the Secretary of Defense, ensure that there is no unnecessary overlap between national foreign intelligence programs and Department of Defense intelligence programs consistent with the requirement to develop competitive analysis, and provide to and obtain from the Secretary of Defense all information necessary for this purpose;

r. in accordance with law and relevant procedures approved by the Attorney General under this Order, give the heads of the departments and agencies access to all intelligence, developed by the CIA or the staff elements of the Director of Central Intelligence, relevant to the national intelligence needs of the departments and agencies.

1-6. Duties and Responsibilities of the Heads of Executive Branch Departments and Agencies.

a. The heads of all Executive Branch departments and agencies shall, in accordance with law and relevant procedures approved by the Attorney General under this Order, give the Director of Central Intelligence access to all information relevant to the national intelligence needs of the United States, and shall give due consideration to requests from the Director of Central Intelligence for appropriate support for Intelligence Community activities.

b. The heads of departments and agencies involved in the National Foreign Intelligence Program shall ensure timely development and submission to the Director of Central Intelligence by the program managers and heads of component activities of proposed national programs and budgets in the format designated by the Director of Central Intelligence, and shall also ensure that the Director of Central Intelligence is provided, in a timely and responsive manner, all information necessary to perform the Director's program and budget responsibilities.

c. The heads of departments and agencies involved in the National Foreign Intelligence Program may appeal to the President decisions by the Director of Central Intelligence on budget or re-programming matters of the National Foreign Intelligence Program.

1-7. Senior Officials of the Intelligence Community.

The heads of departments and agencies with organizations in the Intelligence Community or the heads of such organizations, as appropriate, shall:

a. report to the Attorney General possible violations of those federal criminal laws specified in procedures agreed upon by the Attorney General and the head of the department or agency concerned, in a manner consistent with the protection of intelligence sources and methods, as specified in those procedures;

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b. in any case involving serious or continuing breaches of security, recommend to the Attorney General that the case be referred to the FBI for further investigation;

c. furnish the Director of Central Intelligence and the NSC, in accordance with applicable law and procedures approved by the Attorney General under this Order, the information required for the performance of their respective duties;

d. report to the Intelligence Oversight Board, and keep the Director of Central Intelligence appropriately informed concerning any intelligence activities of their organizations that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive;

e. protect intelligence and intelligence sources and methods from unauthorized disclosure consistent with guidance from the Director of Central Intelligence;

f. disseminate intelligence to cooperating foreign governments under arrangements established or agreed to by the Director of Central Intelligence;

g. participate in the development of procedures approved by the Attorney General governing production and dissemination of intelligence activities abroad if their departments, agencies, or organizations have intelligence responsibilities for foreign or domestic narcotics production and trafficking;

h. instruct their employees to cooperate fully with the Intelligence Oversight Board;

i. ensure that the Inspectors General and General Counsels for their organizations have access to any information necessary to perform their duties assigned by this Order.

1-8. The Central Intelligence Agency.

All duties and responsibilities of the CIA shall be related to the intelligence functions set out below. As authorized by this Order; the National Security Act of 1947, as amended; the CIA Act of 1949, as amended; appropriate directives or other applicable law, the CIA shall:

a. collect, produce and disseminate foreign intelligence and counterintelligence, including information not otherwise obtainable. The collection of foreign intelligence within the United States shall be coordinated with the FBI as required by procedures agreed upon by the ~~Director~~ of Central Intelligence and the Attorney General;

b. collect, produce and disseminate intelligence on foreign aspects of narcotics production and trafficking;

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c. conduct counterintelligence activities outside the United States and, without assuming or performing any internal security functions, conduct counterintelligence activities within the United States in coordination with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

d. coordinate counterintelligence activities and the collection of information not otherwise obtainable when conducted outside the United States by other departments and agencies;

e. conduct special activities approved by the President. No agency except the CIA (or the Armed Forces of the United States in time of war declared by Congress or during any period covered by a report from the President to the Congress under the War Powers Resolution (87 Stat. 855)) may conduct any special activity unless the President determines that another agency is more likely to achieve a particular objective;

f. conduct services of common concern for the Intelligence Community as directed by the NSC;

g. carry out or contract for research, development and procurement of technical systems and devices relating to authorized functions;

h. protect the security of its installations, activities, information, property, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the CIA as are necessary;

i. conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (a) through (h) above, including procurement and essential cover and proprietary arrangements.

1-9. The Department of State.

The Secretary of State shall:

a. overtly collect information abroad relevant to United States foreign policy concerns;

b. produce and disseminate foreign intelligence relating to United States foreign policy as required for the execution of the Secretary's responsibilities;

c. disseminate, as appropriate, reports received from United States diplomatic and consular posts;

d. transmit reporting requirements of the Intelligence Community to the Chiefs of United States Missions abroad;

e. support Chiefs of Missions in discharging their statutory responsibilities for direction and coordination of mission activities.

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1-10. The Department of the Treasury.

The Secretary of the Treasury shall:

- a. overtly collect foreign financial and monetary information;
- b. participate with the Department of State in the overt collection of general foreign economic information;
- c. produce and disseminate foreign intelligence relating to United States economic policy as required for the execution of the Secretary's responsibilities;
- d. conduct, through the United States Secret Service, activities to determine the existence and capability of surveillance equipment being used against the President of the United States, the Executive Office of the President, and, as authorized by the Secretary of the Treasury or the President, other Secret Service protectees and United States officials. No information shall be acquired intentionally through such activities except to protect against such surveillance, and those activities shall be conducted pursuant to procedures agreed upon by the Secretary of the Treasury and the Attorney General.

1-11. The Department of Defense.

The Secretary of Defense shall:

- a. collect national foreign intelligence and be responsive to collection tasking by the Director of Central Intelligence;
- b. collect, produce and disseminate military and military-related foreign intelligence and counterintelligence as required for execution of the Secretary's responsibilities;
- c. conduct programs and missions necessary to fulfill national, departmental and tactical foreign intelligence requirements;
- d. conduct counterintelligence activities in support of Department of Defense components outside the United States in coordination with the CIA and within the United States in coordination with the FBI, pursuant to procedures agreed upon by the Secretary of Defense and the Attorney General;
- e. conduct, as the executive agent of the United States government, signals intelligence and communications security activities, except as otherwise directed by the NSC;
- f. provide for the timely transmission of critical intelligence, as defined by the Director of Central Intelligence, within the United States government;
- g. carry out or contract for research, development and procurement of technical systems and devices relating to authorized intelligence functions;

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h. protect the security of Department of Defense installations, activities, property, information, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the Department of Defense as are necessary;

i. establish and maintain military intelligence relationships and military intelligence exchange programs with selected cooperative foreign defense establishments and international organizations, and ensure that such relationships and programs are in accordance with policies formulated by the Director of Central Intelligence;

j. direct, operate, control and provide fiscal management for the National Security Agency and for defense and military intelligence and national reconnaissance entities;

k. conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (a) through (j) above.

1-12. Intelligence Components Utilized by the Secretary of Defense.

In carrying out the responsibilities assigned in section 1-11, the Secretary of Defense is authorized to utilize the following:

a. Defense Intelligence Agency, whose responsibilities shall include:

1. collection, production, or, through tasking and coordination, provision of military and military-related intelligence for the Secretary of Defense, the Joint Chiefs of Staff, other Defense components, and, as appropriate, non-defense agencies;

2. collection and provision of military intelligence for national foreign intelligence and counterintelligence products;

3. coordination of all Department of Defense intelligence collection requirements;

4. management of the Defense Attache system;

5. provision of foreign intelligence and counterintelligence staff support as directed by the Joint Chiefs of Staff.

b. National Security Agency, whose responsibilities shall include:

1. establishment and operation of an effective unified organization for signals intelligence activities, except for the delegation of operational control over certain operations that are conducted through other elements of the Intelligence Community. No other department or agency may engage in signals intelligence activities except pursuant to a delegation by the Secretary of Defense;

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2. controls of signals intelligence collection and processing activities, including assignment of resources to an appropriate agent for such periods and tasks as required for the direct support of military commanders;

3. collection of signals intelligence information for national foreign intelligence purposes in accordance with guidance from the Director of Central Intelligence;

4. processing of signals intelligence data for national foreign intelligence purposes in accordance with guidance from the Director of Central Intelligence;

5. dissemination of signals intelligence information for national foreign intelligence purposes to authorized elements of the Government, including the military services, in accordance with guidance from the Director of Central Intelligence;

6. collection, processing and dissemination of signals intelligence information for counterintelligence purposes;

7. provision of signals intelligence support for the conduct of military operations in accordance with tasking, priorities, and standards of timeliness assigned by the Secretary of Defense. If provision of such support requires use of national collection systems, these systems will be tasked within existing guidance from the Director of Central Intelligence;

8. Executing the responsibilities of the Secretary of Defense as executive agent for the communications security of the United States Government;

9. conduct of research and development to meet needs of the United States for signals intelligence and communications security;

10. protection of the security of its installations, activities, property, information, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the NSA as are necessary;

11. prescribing, within its field of authorized operations, security regulations covering operating practices, including the transmission, handling and distribution of signals intelligence and communications security material within and among the elements under control of the Director of the NSA, and exercising the necessary supervisory control to ensure compliance with the regulations;

12. conduct of foreign cryptologic liaison relationships, with liaison for intelligence purposes conducted in accordance with policies formulated by the Director of Central Intelligence;

13. conduct of such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (1) through (12) above, including procurement.

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c. Offices for the collection of specialized intelligence through reconnaissance programs, whose responsibilities shall include:

1. carrying out consolidated reconnaissance programs for specialized intelligence;
2. responding to tasking in accordance with procedures established by the Director of Central Intelligence;
3. delegating authority to the various departments and agencies for research, development, procurement and operation of designated means of collection.

d. The foreign intelligence and counterintelligence elements of the Army, Navy, Air Force, and Marine Corps, whose responsibilities shall include:

1. collection, production and dissemination of military and military-related foreign intelligence and counterintelligence, and information on the foreign aspects of narcotics production and trafficking. When collection is conducted in response to national foreign intelligence requirements, it will be conducted in accordance with guidance from the Director of Central Intelligence. Collection of national foreign intelligence, not otherwise obtainable, outside the United States shall be coordinated with the CIA, and such collection within the United States shall be coordinated with the FBI;
2. conduct of counterintelligence activities outside the United States in coordination with the CIA, and within the United States in coordination with the FBI;

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(3) Monitoring of the development, procurement and management of tactical intelligence systems and equipment and conducting related research, development, and test and evaluation activities.

(e) Other offices within the Department of Defense appropriate for conduct of the intelligence missions and responsibilities assigned to the Secretary of Defense. If such other offices are used for intelligence purposes, the provisions of sections 2-1 through 2-11 of this Order shall apply to those offices when used for those purposes.

1-13. The Department of Energy. The Secretary of Energy shall:

(a) Participate with the Department of State in overtly collecting information with respect to foreign energy matters;

(b) Produce and disseminate foreign intelligence necessary for the Secretary's responsibilities;

(c) Participate in formulating intelligence collection and analysis requirements where the special expert capability of the Department can contribute; and

(d) Provide expert technical, analytical and research capability to other agencies within the Intelligence Community.

1-14. The Federal Bureau of Investigation. Under the supervision of the Attorney General and pursuant to such regulations as the Attorney General may establish, the Director of the FBI shall:

(a) Within the United States conduct counterintelligence and coordinate counterintelligence activities of other agencies within the Intelligence Community. When a counterintelligence activity of the FBI involves military or civilian personnel of the Department of Defense, the FBI shall coordinate with the Department of Defense;

(b) Conduct counterintelligence activities outside the United States in coordination with the CIA as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

(c) Conduct within the United States, when requested by officials of the Intelligence Community designated by the President, activities undertaken to collect foreign intelligence or support foreign intelligence collection requirements of other agencies within the Intelligence Community, or, when requested by the Director of the National Security Agency, to support the communications security activities of the United States Government;

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(d) Produce and disseminate foreign intelligence and counterintelligence; and

(e) Carry out or contract for research, development and procurement of technical systems and devices relating to the functions authorized above.

SECTION 2

CONDUCT OF INTELLIGENCE ACTIVITIES

2-1. Need. Accurate and timely information about the capabilities, intentions and activities of foreign powers, organizations, or persons and their agents is essential to informed decision-making in the areas of national defense and foreign relations. Collection of such information is a priority objective and will be pursued in an aggressive, innovative and responsible manner that is consistent with the Constitution and applicable law and respectful of the principles upon which the United States was founded.

2-2. Purpose. This Order is intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers. Set forth below are certain general principles that, in addition to applicable laws, are intended to achieve the proper balance between the acquisition of essential information and protection of individual interests. Nothing in this Order shall be construed to apply to or interfere with any authorized civil or criminal law enforcement responsibility of any department or agency.

2-3. Collection of Information. Agencies within the Intelligence Community are authorized to collect, retain or disseminate information concerning United States persons only in accordance with procedures established by the head of the agency concerned and approved by the Attorney General. Those procedures shall permit collection, retention and dissemination of the following types of information:

- (a) Information that is publicly available or collected with a United States person's consent;
- (b) Information constituting foreign intelligence or counterintelligence, including such information concerning corporations or other commercial organizations;
- (c) Information obtained in the course of a lawful foreign intelligence, counterintelligence, international narcotics or international terrorism investigation;

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(d) Information relevant to the safety of any persons or organizations, including those who are targets, victims or hostages of international terrorist organizations;

(e) Information needed to protect foreign intelligence or counterintelligence sources or methods from unauthorized disclosure;

(f) Information concerning persons who are reasonably believed to be potential sources or contacts for the purpose of determining their suitability or credibility;

(g) Information arising out of a lawful personnel, physical or communications security investigation;

(h) Information acquired by overhead reconnaissance not directed at specific United States persons;

(i) Incidentally obtained information that may indicate involvement in activities that may violate federal, state, local or foreign laws; and

(j) Information necessary for administrative purposes.

In addition, agencies within the Intelligence Community may disseminate information, other than information derived from signals intelligence, to another agency within the Intelligence Community for purposes of allowing the recipient agency to determine whether the information is relevant to its responsibilities and can be retained by it.

2-4. Collection Techniques. Agencies within the Intelligence Community shall use the least intrusive collection techniques feasible within the United States or directed against United States persons abroad. Agencies are not authorized to use such techniques as electronic surveillance, unconsented physical search, mail surveillance, physical surveillance, or monitoring devices unless they are in accordance with procedures established by the head of the agency concerned and approved by the Attorney General. Such procedures shall protect constitutional and other legal rights and limit use of such information to lawful governmental purposes. These procedures shall not authorize:

(a) The CIA to engage in electronic surveillance within the United States except for the purpose of training, testing, or conducting countermeasures to hostile electronic surveillance;

(b) Unconsented physical searches in the United States by agencies other than the FBI, except for:

(1) Searches by counterintelligence elements of the military services directed against military personnel within the United States or abroad for intelligence purposes, when authorized by a military commander empowered to approve physical searches

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for law enforcement purposes, based upon a finding of probable cause to believe that such persons are acting as agents of foreign powers; and

(2) Searches by CIA of personal property of non-United States persons lawfully in its possession.

(c) Physical surveillance of a United States person in the United States by agencies within the Intelligence Community other than the FBI except for physical surveillance of a present employee or contractor of an intelligence agency or employee of such contractor, or a military person employed by a nonintelligence element of a military service.

2-5. Attorney General Approval. The Attorney General hereby is delegated the power to approve the use for intelligence purposes, within the United States or against a United States person abroad, of any technique for which a warrant would be required if undertaken for law enforcement purposes, provided that such techniques shall not be undertaken unless the Attorney General has determined in each case that there is probable cause to believe that the technique is directed against a foreign power or an agent of a foreign power. Electronic surveillance, as defined in the Foreign Intelligence Surveillance Act of 1978, shall be conducted in accordance with that Act, as well as this Order. This section does not constitute any limitation upon the powers and authority of the President under the Constitution and laws of the United States.

2-6. Assistance to Law Enforcement Authorities. Agencies within the Intelligence Community are authorized to:

(a) Cooperate with appropriate law enforcement agencies for the purpose of protecting the employees, information, property and facilities of any agency within the Intelligence Community;

(b) Unless otherwise precluded by law or this Order, participate in law enforcement activities to investigate or prevent clandestine intelligence activities by foreign powers, or international terrorist or narcotics activities;

(c) Provide specialized equipment, technical knowledge, or assistance of expert personnel for use by any department or agency, or, when lives are endangered, to support local law enforcement agencies. Provision of assistance by expert personnel shall be approved in each case by the General Counsel of the providing agency; and

(d) Render any other assistance and cooperation to law enforcement authorities not precluded by applicable law.

2-7. Contracting. Agencies within the Intelligence Community are authorized to enter into contracts or arrangements for the provision of goods or services with private companies or institutions in the United States and need not reveal the sponsorship of such contracts or arrangements for authorized intelligence purposes.

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Contracts or arrangements with academic institutions may be undertaken only with the consent of appropriate officials of the institution.

2-8. Consistency with Other Laws. Nothing in this Order shall be construed to authorize any activity in violation of the Constitution or statutes of the United States.

2-9. Undisclosed Participation in Domestic Organizations. No one acting on behalf of agencies within the Intelligence Community may join or otherwise participate in any organization in the United States on behalf of any agency within the Intelligence Community without disclosing their intelligence affiliation to appropriate officials of the organization, except in accordance with procedures established by the head of the agency concerned and approved by the Attorney General. Such participation shall be authorized only if it is essential to achieving lawful purposes as determined by the agency head or designee. No such participation may be undertaken for the purpose of influencing the activity of the organization or its members unless the Attorney General has approved the participation and determined that it will not interfere with any rights protected by the Constitution or laws of the United States.

2-10. Human Experimentation. No agency within the Intelligence Community shall sponsor, contract for or conduct research on human subjects except in accordance with guidelines issued by the Department of Health and Human Services. The subject's informed consent shall be documented as required by those guidelines.

2-11. Prohibition on Assassination. No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.

2-12. Indirect Participation. No agency of the Intelligence Community shall participate in or request any person to undertake activities forbidden by this Order.

SECTION 3

OVERSIGHT OF INTELLIGENCE ACTIVITIES

3-1. Intelligence Oversight Board.

(a) Establishment and Purpose. There is hereby established an Intelligence Oversight Board, which shall function within the White House to advise the President as to the legality and propriety of activities of the Intelligence Community.

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(b) Membership. The Board shall be composed of three persons. One member, drawn from among the membership of the President's Foreign Intelligence Advisory Board, shall be designated by the President as Chairman. The Board shall employ such full-time staff as it may require to perform its duties.

(c) Duties. The Intelligence Oversight Board shall:

(1) Inform the President of intelligence activities that any member of the Board believes are in violation of the Constitution or laws of the United States, Executive order, or Presidential directive;

(2) Forward to the Attorney General reports received concerning intelligence activities that the Board believes to be unlawful;

(3) Review the internal guidelines of each agency within the Intelligence Community concerning the lawfulness of intelligence activities;

(4) Review the practices and procedures of the Inspectors General and General Counsels of the Intelligence Community for discovering and reporting intelligence activities that may be unlawful or contrary to Executive order or Presidential directive;

(5) The Board shall consider and take appropriate action with respect to matters identified by the Central Intelligence Agency or other agencies of the Intelligence Community. When so directed by the President, the Board shall advise and make appropriate recommendations to the CIA and other agencies of the Intelligence Community.

(d) Compensation and Allowances. Members of the Board shall serve without compensation, but may receive transportation, expense, and per diem allowances as authorized by law. The Board's staff shall receive pay and allowances as determined by the Board. Expenditures of the Board shall be paid from the appropriation appearing under the heading "Unanticipated Needs" in the Executive Office Appropriations Act, 1980, Pub. L. 96-74, 93 Stat. 565, and, to the extent permitted by law, from any corresponding appropriation for subsequent years. Such payments shall be made without regard to the provisions of section 3681 of the Revised Statutes and Section 9 of the Act of March 4, 1909, 35 Stat. 1027 (31 U.S.C. §§672, 673).

3-2. Responsibilities of Heads of Departments and Agencies. The heads of departments and agencies of the Intelligence Community shall provide the Board with information necessary to carry out its responsibilities.

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3-3. Inspectors General and General Counsels. Inspectors General and General Counsels of the Intelligence Community shall report to the Board concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive.

3-4. Attorney General. The Attorney General shall report to the President any intelligence activities determined to violate the Constitution or laws of the United States or to be contrary to Executive order or Presidential directive.

3-5. Congressional Oversight. The duties and responsibilities of the Director of Central Intelligence and the heads of other departments, agencies, and entities engaged in intelligence activities to cooperate with the Congress in the conduct of its responsibilities for oversight of intelligence activities shall be as provided in title 50, United States Code, section 413.

SECTION 4

GENERAL PROVISIONS

4-1. Repealer. This Order supersedes Executive Order 12036. "United States Intelligence Activities," dated January 24, 1978.

4-2. Implementation. The NSC, the Secretary of Defense, the Attorney General, and the Director of Central Intelligence shall issue such appropriate directives and procedures as are necessary to implement this Order. Heads of agencies within the Intelligence Community shall issue appropriate supplementary directives and procedures consistent with this Order. The Attorney General shall provide a statement of reasons for not approving any procedures established by the head of an agency in the Intelligence Community other than the FBI. The National Security Council may establish procedures in instances where the agency head and the Attorney General are unable to reach agreement on other than constitutional or other legal grounds.

4-3. Procedures. Until the procedures required by this Order have been established, the activities herein authorized which require procedures shall be conducted in accordance with existing procedures or requirements established under Executive Order 12036. Procedures required by this Order shall be established as expeditiously as possible.

4-4. Definitions. For the purposes of this Order, the following terms shall have these meanings:

(a) Counterintelligence means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel, physical, document or communications security programs.

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(b) Electronic surveillance means acquisition of a nonpublic communication by electronic means without the consent of a person who is a party to an electronic communication or, in the case of a nonelectronic communication, without the consent of a person who is visibly present at the place of communication, but not including the use of radio direction-finding equipment solely to determine the location of a transmitter.

(c) Employee means a person employed by, assigned to or acting for an agency within the Intelligence Community.

(d) Foreign intelligence means information relating to the capabilities, intentions and activities of foreign powers, organizations or persons, but not including counterintelligence except for information on international terrorist activities.

(e) Intelligence activities means all activities that agencies within the Intelligence Community are authorized to conduct pursuant to this Order.

(f) Intelligence Community and agencies within the Intelligence Community refer to the following agencies or organizations:

(1) The Central Intelligence Agency (CIA);

(2) The National Security Agency (NSA);

(3) The Defense Intelligence Agency (DIA);

(4) The Offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;

(5) The Bureau of Intelligence and Research of the Department of State;

(6) The intelligence elements of the Army, Navy, Air Force, and Marine Corps, the Federal Bureau of Investigation (FBI), the Department of the Treasury, and the Department of Energy; and

(7) The staff elements of the Director of Central Intelligence.

(g) The National Foreign Intelligence Program includes the programs listed below, but its composition shall be subject to review by the National Security Council and modification by the President:

(1) The programs of the CIA;

(2) The Consolidated Cryptologic Program, the General Defense Intelligence Program, and the programs of the offices

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within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance, except such elements as the Director of Central Intelligence and the Secretary of Defense agree should be excluded;

(3) Other programs of agencies within the Intelligence Community designated jointly by the Director of Central Intelligence and the head of the department or by the President as national foreign intelligence or counterintelligence activities;

(4) Activities of the staff elements of the Director of Central Intelligence;

(5) Activities to acquire the intelligence required for the planning and conduct of tactical operations by the United States military forces are not included in the National Foreign Intelligence Program.

(h) Special activities means activities conducted in support of national foreign policy objectives abroad which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activities, but which are not intended to influence United States political processes, public opinion, or policies, and do not include diplomatic activities or the collection and production of intelligence or related support functions.

(i) United States person means a United States citizen, an alien known by the intelligence agency concerned to be a permanent resident alien, an unincorporated association substantially composed of United States citizens or permanent resident aliens, or a corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments.

NINETY-SEVENTH CONGRESS

PETER W. RODINO, JR. (NJ), CHAIRMAN

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CENTRAL INTELLIGENCE

ALAN A. FRANK

STAFF DIRECTOR

GARRETT J. CLINE

ASSOCIATE COUNSEL

FRANKLIN G. FOLK

Congress of the United States

Committee on the Judiciary

House of Representatives

Washington, D.C. 20515

Telephone: 202-225-3951

October 13, 1981

William J. Casey
Director
Central Intelligence Agency
Washington, DC 20505

Dear Director Casey:

Recent news stories about the proposed executive order on intelligence policy have caused some concern to me and to other members of the House Judiciary Committee.

I understand, for example, that the proposed order gives authority to the CIA to conduct covert actions in this country. This represents a dramatic shift in policy which I believe deserves careful scrutiny, not only from the point of view of the need for this new direction but also for the serious civil liberties questions this proposal raises.

Moreover, I understand that one entire section deals with the role of the Federal Bureau of Investigation and that the proposed order changes the role the Attorney General plays in intelligence policy.

As you know, the House Judiciary Committee, which I chair, has oversight and authorization responsibility for the Department of Justice, including the FBI. Any shift in the responsibility of the Department, or any of its components, would fall within the jurisdiction of this Committee. Moreover, any new law or policy which potentially affects the civil rights and liberties of our citizens also is of primary concern to us.

Accordingly, I hereby request that you make available to the Committee the proposed executive order. The Committee will take every precaution to assure that the confidentiality with which the document has been treated to date will be maintained.

I look forward to your earliest attention to this request.

Sincerely,


PETER W. RODINO, JR.
Chairman

Central Intelligence Agency



Washington D.C. 20505

27 October 1981

Honorable Peter W. Rodino, Jr.
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I have your letter requesting a copy of the proposed Executive Order on the intelligence policy. The proposed revision of the Executive Order has been under way for some time in the Executive Branch under the direction of the National Security Council staff. The NSC has authorized consultations on a draft of this Order with both the House and Senate Intelligence Oversight Committees but has not authorized us to engage in dissemination of this draft revision or discussion of that draft beyond the Intelligence Oversight Committees. This is in accordance with Congressionally established procedure for the oversight of the Intelligence Community under which the intelligence agencies deal with the Intelligence Committees and that the needs of other committees are to be satisfied through the chairmen of those committees or through the members of their committee who sit on the Intelligence Committees who, in the case of the Judiciary Committee, are Messrs. Mazzoli and McCrory. I understand that Chairman Boland has already advised Congressman Edwards to this effect.

I regret that, at this time, I have no alternative but to suggest that you satisfy your need for matters which fall within your Committee's jurisdiction by making your request to the Assistant to the President for National Affairs or the Chairman of the House Permanent Select Committee on Intelligence.

Having been out of the country for most of last week, I tried to reach you on the telephone just this morning. Having failed to reach you, I am having this response delivered to you today by hand.

Sincerely,

A handwritten signature in cursive script, reading "William J. Casey".

William J. Casey
Director of Central Intelligence

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GENERAL COUNSEL:

ALAN A. PARKER

STAFF DIRECTOR:

GARNER J. CLINE

ASSOCIATE COUNSEL:

FRANKLIN G. POLK

Congress of the United States

Committee on the Judiciary

House of Representatives

Washington, D.C. 20515

Telephone: 202-225-3951

October 16, 1981

The President of the United States
 The White House
 Washington, DC 20500

Dear Mr. President:

Recent news accounts regarding the proposed executive order on intelligence policy have caused considerable concern to us.

We understand, for example, that the proposed order gives authority to the CIA to conduct covert actions in this country. This represents a dramatic shift in policy which I believe deserves careful scrutiny, not only from the point of view of the need for this new direction but also for the serious civil liberties questions this proposal raises.

Moreover, we understand that one entire section deals with the role of the Federal Bureau of Investigation and that the proposed order changes the role the Attorney General plays in intelligence policy.

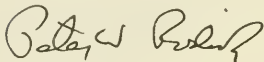
As you know, the House Judiciary Committee has oversight and authorization responsibility for the Department of Justice, including the FBI. Any shift in the responsibility of the Department, or any of its components, would fall within the jurisdiction of this Committee. Moreover, any new law or policy which potentially affects the constitutional and civil rights and liberties of our citizens also is of primary concern to us.

We are concerned that the important issues and policies raised by the order have not received the scrutiny they deserve. We believe many of these issues can and should be aired in a public forum and we intend to provide that forum.

The President
October 16, 1981
Page two

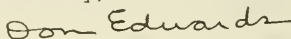
The Judiciary Committee, as well as the Intelligence Committee has an important responsibility in this area. We respectfully request that you and your administration take the time to consult with the members of this Committee before implementing the order.

With kind regards,



PETER W. RODINO, Jr.
Chairman
House Judiciary Committee

Sincerely,



Don Edwards
Chairman
Subcommittee on Civil and
Constitutional Rights

PWRj:cld



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 27 1981

Honorable Peter W. Rodino, Jr.
Chairman, Committee on the
Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter of October 22, 1981, inviting the Attorney General to testify before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary concerning intelligence policies and procedures and the rights of Americans.

The Subcommittee staff has advised the Office of Legislative Affairs by telephone that the October 28 hearing will be open to the public and will focus on the revision of the Executive Order on Intelligence, E.O. 12036.

We regret that we cannot participate in a Committee hearing on a draft Executive Order which the President has not signed.

Sincerely,

(Signed) Robert A. McConnell

Robert A. McConnell
Assistant Attorney General

cc: Honorable Don Edwards ✓
Chairman
Subcommittee on Civil and Constitutional Rights

APPENDIX 2

PROCEDURES RELATING TO UNDISCLOSED
PARTICIPATION IN DOMESTIC ORGANIZATIONS

For the purpose of implementing Section 2-207 of the Executive Order 12036, the Director of Central Intelligence (DCI) has established and the Attorney General has approved the following procedures relating to undisclosed participation in any organization within the United States by employees of the Central Intelligence Agency (CIA), acting on behalf of the CIA or Office of the DCI.

PROHIBITIONS

1. A CIA employee, acting on behalf of CIA or the Office of the DCI, may not join or otherwise participate in any organization within the United States, without disclosing his CIA affiliation to appropriate officials of the organization (such participation is referred to in these procedures as "undisclosed participation") except as it may be found by the DCI or Deputy Director of Central Intelligence (DDCI) subject to the review of the Attorney General to be essential to achieve a lawful purpose. This prohibition does not, however, require a disclosure of CIA affiliation if the participation is attendance at a public meeting, the sponsors of which do not require or expect such a disclosure as a condition of attendance.

2. A CIA employee may not undertake undisclosed participation for the purpose of influencing either the goals or activities of an organization or the organizational activities of its members except in the case of an organization that is composed primarily of individuals who are not United States persons and is reasonably believed to be acting on behalf of a foreign power, as determined by the Attorney General.

3. A CIA employee shall not request or otherwise encourage, directly or indirectly another person to undertake on behalf of CIA or the Office of the DCI any activity prohibited by these procedures or any permitted activity except pursuant to these procedures.

4. CIA will not knowingly store or disseminate outside CIA, or to users within CIA, nonpublicly available information concerning United States persons acquired through undisclosed participation except as provided in Attorney General-approved CIA procedures (Section 2-208 of E.O. 12036) governing the collection, storage and dissemination of such information concerning such persons.

PROCEDURES RELATING TO UNDISCLOSED PARTICIPATION IN DOMESTIC ORGANIZATIONS

For the purpose of implementing Section 2-207 of the Executive Order 12036, the Director of Central Intelligence (DCI) has established and the Attorney General has approved the following procedures relating to undisclosed participation in any organization within the United States by employees of the Central Intelligence Agency (CIA), acting on behalf of the CIA or Office of the DCI.

PROHIBITIONS

1. A CIA employee, acting on behalf of CIA or the Office of the DCI, may not join or otherwise participate in any organization within the United States, without disclosing his CIA affiliation to appropriate officials of the organization (such participation is referred to in these procedures as "undisclosed participation") except as it may be found by the DCI or Deputy Director of Central Intelligence (DDCI) subject to the review of the Attorney General to be essential to achieve a lawful purpose. This prohibition does not, however, require a disclosure of CIA affiliation if the participation is attendance at a public meeting, the sponsors of which do not require or expect such a disclosure as a condition of attendance.

2. A CIA employee may not undertake undisclosed participation for the purpose of influencing either the goals or activities of an organization or the organizational activities of its members except in the case of an organization that is composed primarily of individuals who are not United States persons and is reasonably believed to be acting on behalf of a foreign power, as determined by the Attorney General.

3. A CIA employee shall not request or otherwise encourage, directly or indirectly another person to undertake on behalf of CIA or the Office of the DCI any activity prohibited by these procedures or any permitted activity except pursuant to these procedures.

4. CIA will not knowingly store or disseminate outside CIA, or to users within CIA, nonpublicly available information concerning United States persons acquired through undisclosed participation except as provided in Attorney General-approved CIA procedures (Section 2-208 of E.O. 12036) governing the collection, storage and dissemination of such information concerning such persons.

PERMITTED ACTIVITIES

5. Undisclosed participation is permissible if it is determined by the DCI or DDCI to be essential to achieve one or more of the lawful purposes listed below. Any such determination is subject to review by the Attorney General, although it does not require such review. Lawful purposes are:

a. to obtain training or education relevant to CIA employment;

b. to obtain publications of organizations whose membership is open to the general public;

c. to maintain or enhance the qualifications of CIA employees, and to make it possible for them to stay abreast of developments in their fields of professional expertise;

d. to maintain the cover of CIA personnel, programs and facilities which are not publicly acknowledged as such by the United States Government;

e. to develop associations and credentials to be utilized for purposes relating to foreign intelligence* as for example by joining an organization to which an employee would ordinarily be expected to belong if his cover employment were his true employment;

f. to utilize individuals** on a witting or voluntary basis who are members of an organization within the United States to develop persons of foreign nationality as sources or contacts*** for purposes related to foreign intelligence*:

g. to place employees in an organization within the United States to identify and develop persons of foreign nationality as sources or contacts*** for purposes related to foreign intelligence*; and

*The collection of foreign intelligence by the CIA within the United States is the subject of other procedures (those for sections 1-801 and 2-208 of E.O. 12036). Foreign intelligence in the context used in paragraphs 5e, f, g, and h, includes special activities.

**Nothing in these procedures shall preclude CIA from receiving information voluntarily supplied by these individuals, including information relating to United States persons. All such information will be stored and disseminated in accordance with the Attorney General-approved procedures governing Section 2-208 of E.O. 12036.

***The investigation of a United States person as a potential source or contact is the subject of other procedures (those for Section 2-208 of E.O. 12036).

h. to protect the degree of CIA interest in a particular foreign intelligence* subject matter, but limited to participation in an organization that permits such participation by government employees in their official capacities.

6. The Attorney General or his designee may also approve undisclosed participation if:

a. The Attorney General or his designee finds that the organization involved is composed primarily of individuals who are not United States persons and that there are reasonable grounds to believe it is acting on behalf of a foreign power; and

b. The Attorney General or his designee approves the purpose of the undisclosed participation.

7. In determining whether an undisclosed participation is essential to achieve a lawful purpose, the DCI or DDCI will take into account the following considerations:

a. the importance of the activity;

b. whether the purpose could be served if affiliation with CIA were disclosed;

c. whether the cover of CIA employees or facilities would be compromised or jeopardized if affiliation with CIA were disclosed;

d. whether CIA sponsorship of contracts or projects would be compromised if affiliation with CIA were disclosed, but only to the extent that such sponsorship may properly be concealed;

e. whether CIA's level of expertise or interest in a particular field would be revealed, but only to the extent that there are valid reasons for concealing such information;

f. whether CIA's interest in and capabilities concerning specific foreign intelligence objectives would be jeopardized or disclosed; and

g. any adverse consequences, including embarrassment to any other person, that might result from the undisclosed participation, and whether such consequences outweigh the importance of the activity.

*See first footnote previous page.

APPROVAL PROCEDURES FOR PERMITTED ACTIVITIES

8. Except when the undisclosed participation is to purposefully place employees in an organization within the United States to identify and develop persons of a foreign nationality as sources or contacts for purposes related to foreign intelligence (paragraph 5g above), recommendations to the DCI or DDCI for approval of undisclosed participation need not be made on an individual case-by-case basis. Such recommendations may cover a group of related cases. Each recommendation will contain a statement of the facts and circumstances relied upon to support a determination by the DCI or DDCI that the undisclosed participation is essential to achieve one of the lawful purposes noted in paragraph 5 above, in light of the considerations noted in paragraph 7 above and a delegation of authority in accordance with paragraph 9 immediately below.

9. The DCI or DDCI may delegate the authority to approve individual cases within a group of related cases of undisclosed participation for the purposes enumerated in paragraphs 5a, b, c, and h above to senior officials. Such authority for the purposes of paragraphs 5d and e above may be delegated to a deputy director or an immediate subordinate thereof. Such authority for the purpose of paragraph 5f may be delegated to the Deputy Director for Operations and the Chief, Foreign Resources Division. Such authority for the purpose described in paragraph 5g may not be delegated. Senior officials are the chiefs of CIA stations, bases and installations outside of CIA Headquarters and employees at CIA Headquarters with, as determined by the DCI or DDCI, equivalent or superior responsibility or authority.

10. All recommendations to the DCI or DDCI for a determination that an undisclosed participation is essential to achieve a lawful purpose shall be forwarded through the General Counsel, CIA. All other recommendations will be subject to, but not require, the review of the General Counsel.

11. All recommendations to the Attorney General or his designee pursuant to paragraph 6 above to approve an undisclosed participation for the purpose of influencing either the goals or activities of an organization or the organizational activities of its members will be made by the DCI or DDCI and will contain a statement of the facts and circumstances that the DCI or DDCI believe will support such participation and a statement of the facts and circumstances that the DCI or DDCI believe will support a determination that the organization is composed primarily of individuals who are not United States persons and is believed to be acting in behalf of a foreign power. Those recommendations shall be forwarded through the General Counsel, CIA.

12. Where necessary, a recommendation to the Attorney General, DCI or the DDCI may be oral, and authorization may also be oral, but in these circumstances the recommendation will otherwise be in conformance with these procedures and will be confirmed as promptly as possible in writing.

13. All determinations made under these procedures shall specify the duration of the participation, not to exceed twelve months and shall include provisions to insure that such participation is limited in its nature, scope and duration to that necessary to achieve the lawful purpose.

14. Nothing in these procedures shall preclude CIA employees from representing that they are employed by an organizational component of CIA as long as that component has been officially and publicly acknowledged as a part of CIA.

15. Nothing in these procedures shall prohibit the retention or dissemination of information necessary for the purpose of determining or assuring that the requirements of these procedures are satisfied.

INTERPRETATION

16. All questions as to the coverage and interpretation of these procedures will be resolved by the General Counsel, CIA, in consultation where there is a significant new legal question, with the Department of Justice. The DCI may modify these procedures upon the express approval of the Attorney General.

DEFINITIONS

17. For the purposes of this approval:

a. "Acting on behalf of a foreign power" includes but is not limited to all activities of an "agent of a foreign power" when a person is acting in that capacity.

b. "Acting on behalf of CIA or the Office of the DCI" means acting in the course of an employee's official duties rather than acting in the employee's private capacity for a personal purpose. The term includes arrangement pursuant to which CIA pays dues, membership or attendance fees for a CIA employee to join or participate in an organization with the United States but does not include private membership or participation in such an organization in which any Federal employee might ordinarily join or participate as a private citizen.

c. "Agent of a foreign power". means

(1) a person who, for or on behalf of a foreign power, is engaged in clandestine intelligence activities (including clandestine activities intended to affect the political or governmental process); sabotage, or international terrorist activities, or who conspires with or knowingly aids or abets such a person in engaging in such activities;

(2) a person who is an officer or employee of a foreign power*;

(3) a corporation or other entity that is owned or controlled directly or indirectly by a foreign power;

(4) a person acting in collaboration with an intelligence or security service of a foreign power who has, or has had, access to information or material classified by the United States; or

(5) a person unlawfully acting for or pursuant to the direction of a foreign power, provided that the fact that a person's activities may benefit or further the aims of a foreign power, standing alone, is not sufficient to support a finding that a person is acting for or pursuant to the direction of a foreign power.

d. "Attorney General" includes the Acting Attorney General.

*"Officer or employee of a foreign power" includes foreign nationals in the United States who are acting in an official capacity on behalf of a foreign power, attached to a foreign diplomatic establishment or an establishment under the control of a foreign power, or employed by a public international organization or organization established under an agreement to which the United States is a party.

e. "Appropriate officials of the organization" means any official of the organization reasonably believed to be authorized to act on behalf of the organization in relation to the activity in question.

f. "Clandestine intelligence activity" means an activity conducted for intelligence purposes or for the purpose of affecting political or governmental processes by or on behalf of a foreign power in a manner tending to conceal from the United States Government the nature or fact of such activity or the role of such foreign power, and any knowing activity conducted in support of such activity.

g. "Deputy Director of Central Intelligence" and "DDCI" includes the Acting Deputy Director of Central Intelligence.

h. "Director of Central Intelligence", and "DCI" includes the Acting Director of Central Intelligence.

i. "Employee" means a person employed by, assigned to, or acting for CIA or the Office of the DCI.

j. "Foreign intelligence" means information relating to the capabilities, intentions and activities of foreign powers, organizations or persons, but not including counterintelligence except for information on international terrorist activities.

k. "Foreign power" means

(1) a foreign government or any component thereof, whether or not recognized by the United States;

(2) a faction of a foreign nation or nations, not substantially composed of United States persons;

(3) an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;

(4) a foreign-based group engaged in international terrorist activity; or

(5) a foreign-based political organization not substantially composed of United States persons.

l. "International terrorist activities" means any activity or activities which:

(1) Involves killing, causing serious bodily harm, kidnapping, or violent destruction of property, or an attempt or credible threat to commit such acts;

(2) Appears intended to endanger a protectee of the Secret Service or the Department of State or to further political, social or economic goals by intimidating or coercing a civilian population or any segment thereof, influencing the policy of a government or international organization by intimidation or coercion, or obtaining widespread publicity for a group or its cause; and

(3) Transcends national boundaries in terms of the means by which it is accomplished, the civilian population, government, or international organization it appears intended to coerce or intimidate, or the locale in which its perpetrators operate or seek asylum.

m. "Organization within the United States" includes unincorporated associations, including legal entities of all types (partnerships, clubs, charitable and fraternal groups, academic institutions and other similar types of groups), organized in the United States or substantially composed of United States citizens or aliens admitted for permanent residence and corporations incorporated in the United States. Such term does not include a foreign branch of an organization located in the United States or an organization located outside the United States which is affiliated with an organization located in the United States.

n. "Special activities" means activities conducted abroad in support of national foreign policy objectives which are designated to further official United States programs and policies abroad and which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activities, but not including diplomatic activity or the collection and production of intelligence or related support functions.

o. "United States," when used to describe a place, includes the territories of the United States.

p. "United States person" means

(1) a citizen of the United States;

(2) an alien lawfully admitted for permanent residence, provided that a person outside the United States may be presumed not to be a United States person until information to the contrary is obtained and provided, further, that an alien known to have been admitted for permanent residence in the United States may be presumed to have lost his status as a United States person if he leaves the United States and it is known that he is not in compliance with the administrative formalities provided by law (8 U.S.C. section 1203) that enable such persons to reenter the United States without regard to the provisions of law that would otherwise restrict an alien's entry into the United States;

(3) an unincorporated association organized in the United States or substantially composed of United States citizens or aliens lawfully admitted for permanent residence; provided that unincorporated associations outside the United States may be presumed not to be United States persons until information to the contrary is obtained; or

(4) a corporation incorporated in the United States. ~~A corporation or corporate subsidiary incorporated abroad, even if partially or wholly owned by a corporation incorporated in the United States, is not a United States person.~~

A person in the United States shall be presumed to be a United States person unless information to the contrary is obtained.

g. "User within CIA" means any CIA employee except those employees authorized to have access to the information solely for the purpose of determining whether the requirements of these procedures are satisfied. The only persons so authorized are:

(1) the person initially acquiring the information;

(2) a person in the direct chain of command, both abroad and within the United States, of the person initially acquiring the information and designated advisors thereto;

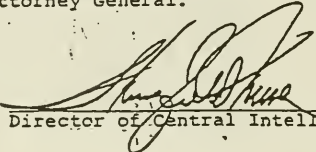
(3) The Inspector General and his designees; and

(4) attorneys in the Office of General Counsel. The Office of General Counsel will be apprised of and will maintain a list of designees. (U)

18. These procedures shall become effective 30 days from the date they are approved by the Attorney General.

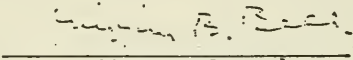
28 July 1979

Date


Director of Central Intelligence

I approve the foregoing procedures in accordance with subsection 2-207 of Executive Order 12036. In my opinion undisclosed participation by CIA employees in domestic organizations conducted pursuant to and in accordance with these procedures is lawful.


Date


Attorney General

PROCEDURES RELATING TO CERTAIN SURREPTITIOUS AND CONTINUOUS ELECTRONIC OR MECHANICAL MONITORING

For the purpose of implementing section 2-203 of Executive Order 12036, the Director of Central Intelligence (DCI) has established and the Attorney General has approved the following procedures for the Central Intelligence Agency's use of any electronic or mechanical device to surreptitiously and continuously monitor a person within the United States or a United States person abroad without a judicial warrant. (U)

(B7)

*Activities undertaken on the basis of 'consent' that would otherwise be subject to these procedures shall only be undertaken if (1) a participant in the activity has specifically consented, in writing if possible or orally, to being the subject of that activity within a specific time frame and context; (2) (in the case of employees or visitors to government facilities) there is a visible posted notice on government property which clearly states that the place or object where the notice is posted is subject to a particular form of search or surveillance or (3) (in the case of employees) the activity is undertaken in accordance with published rules or regulations which are individually distributed to all such employees and the surveillance is otherwise reasonable. (U)

AUTHORITY

4. CIA shall not use any electronic or mechanical device to surreptitiously and continuously monitor any person within the United States under circumstances in which that person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes unless such monitoring is undertaken pursuant to the provisions of the Foreign Intelligence Surveillance Act of 1978 (Pub. L. 95-511). (U)

*An intelligence activity shall be considered to use the least intrusive means possible under all the circumstances of the particular case if less intrusive means cannot acquire intelligence of the nature, reliability, and timeliness required. No method involving a greater intrusion shall be requested or approved unless it has been determined that a less intrusive means will not be reasonable in the specific situation. As a general rule electronic surveillance, surreptitious and continuous monitoring and unconsented physical searches shall be regarded as more intrusive techniques than physical surveillance or other means of obtaining information which is not available publicly. Microphonic surveillance shall be considered more intrusive than telephonic surveillance and surveillance of private residential property shall be regarded as more intrusive than similar surveillances of business property. (U)

APPROVAL PROCEDURES FOR AUTHORIZED ACTIVITIES

7. Requests for approval for the use of an electronic or mechanical device to surreptitiously and continuously monitor a person within the United States under circumstances in which that person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes will conform to the requirements of the Foreign Intelligence Surveillance Act and the procedures established pursuant thereto.

10. When necessary, the request may be oral, and authorization may also be oral, but in these circumstances the request and authorization will be confirmed promptly in writing. (U)

11. All recommendations to the DCI that he request Attorney General approval pursuant to paragraphs 7 and 8 above will be forwarded through the General Counsel or Acting General Counsel, along with supporting information, for his determination that the recommendation conforms to the requirements of these procedures and is otherwise lawful. All recommendations to senior officials pursuant to paragraph 9 above will receive the concurrence of the General Counsel. (U)

15. Nothing in these procedures precludes exceptions by specific written Presidential authorization to the extent the President has lawful authority to approve such exceptions. Any application for such exception will be forwarded by the DCI, after coordination with the General Counsel or Acting General Counsel, to the President through the Attorney General. (U)

16. Nothing in these procedures shall prohibit the retention or disclosure of information necessary for the purpose of determining or assuring whether the requirements of these procedures are satisfied (U)

INTERPRETATION

18. All questions as to the coverage and interpretation of these procedures will be resolved by the General Counsel, CIA, in consultation where there is a significant new legal question, with the Department of Justice. The General Counsel shall have access to all information necessary to implement his responsibilities under these procedures. The DCI may modify these procedures upon the express approval of the Attorney General. (U)

DEFINITIONS

19. For the purpose of these procedures the term:

a. "Agent of a foreign power" means:

(1) a person who, for or on behalf of a foreign power, is engaged in clandestine intelligence activities (including clandestine activities intended to affect the political or governmental process), sabotage, or international terrorist activities, or who conspires with or knowingly aids or abets such a person in engaging in such activities;

(2) a person who is an officer or employee of a foreign power;*

(3) a corporation or other entity that is owned or controlled directly or indirectly by a foreign power;

(4) a person acting in collaboration with an intelligence or security service of a foreign power who has, or has had, access to information or material classified by the United States; or

(5) a person unlawfully acting for or pursuant to the direction of a foreign power, provided that the fact that a person's activities may benefit or further the aims of a foreign power, standing alone, is not sufficient to support a finding that a person is acting for or pursuant to the direction of a foreign power. (U)

b. "Attorney General" includes the Acting Attorney General. (U)

*"Officer or employee of a foreign power" includes foreign nationals in the United States who are acting in an official capacity on behalf of a foreign power, attached to a foreign diplomatic establishment or an establishment under the control of a foreign power, or employed by a public international organization or organization established under an agreement to which the United States is a party. (U)

c. "Available publicly" refers to information that any member of the public could lawfully obtain by request or observation, or information, including public communications, that is lawfully accessible to any member of the public. Nothing herein authorizes a search or surveillance that is otherwise regulated by Attorney General-approved procedures. (U)

d. "Clandestine intelligence activity" means an activity conducted for intelligence purposes or for the purpose of affecting political or governmental processes by or on behalf of a foreign power in a manner tending to conceal from the United States Government the nature or fact of such activity or the role of such foreign power, and any knowing activity conducted in support of such activity. (U)

e. "Counterintelligence" means information gathered and activities conducted to protect against espionage and other clandestine intelligence activities, sabotage, international terrorist activities or assassinations conducted for or on behalf of foreign powers, organizations, or persons, but not including personnel, physical, document or communications security programs. (U)

f. "Director of Central Intelligence" or "DCI" includes the Acting Director of Central Intelligence. (U)

g. "Employee" means a person employed by, assigned to, or acting for the CIA or Office of the Director of Central Intelligence. (U)

h. "Foreign intelligence" means information relating to the capabilities, intentions and activities of foreign powers, organizations or persons, but not including counterintelligence except for information on international terrorist activities. (U)

i. "Foreign power" means

(1) a foreign government or any component thereof, whether or not recognized by the United States;

(2) a faction of a foreign nation or nations, not substantially composed of United States persons;

(3) an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;

(4) a foreign-based group engaged in international terrorist activity and any other group engaged abroad in such activity; or

(5) a foreign-based political organization not substantially composed of United States persons. (U)

j. "International terrorist activities" means any activity or activities which:

(1) involves killing, causing serious bodily harm, kidnapping, or violent destruction of property, or an attempt or credible threat to commit such acts;

(2) appears intended to endanger a protectee of the Secret Service or the Department of State or to further political, social or economic goals by intimidating or coercing a civilian population or any segment thereof, influencing the policy of a government or international organization by intimidation or coercion, or obtaining widespread publicity for a group or its cause; and

(3) transcends national boundaries in terms of the means by which it is accomplished, the civilian population, government, or international organization it appears intended to coerce or intimidate, or the locale in which its perpetrators operate or seek asylum. (U)

k
1. "Probable cause" means a legal threshold which is satisfied by a determination that a belief or opinion held is one which would be shared by a reasonable person considering the facts and circumstances upon which such a belief or opinion is based. (U)

m. "Substantial participation" means requesting use of an electronic or mechanical device directed at a particular target or providing technical equipment, funds, or other services in support of a particular use of such device. (U)

n. "To continuously monitor" means monitoring that is conducted over a substantial period of time without substantial interruption. (U)

o. "To surreptitiously monitor" means monitoring that is conducted in such a fashion that the persons subject thereto are not, in the exercise of reasonable attention to their surroundings, aware of the monitoring. (U)

q. "Users within CIA" means any CIA employee except those employees authorized to have access to the information solely for the purpose of determining whether the requirements of these procedures are satisfied. The only persons so authorized are:

(1) the person initially acquiring the information;

(2) a person in the direct chain of command, both abroad and within the United States, of the person initially acquiring the information and, designated advisors thereto;

(3) the Inspector General and his designees; and

(4) attorneys in the Office of General Counsel. The Office of General Counsel will be apprised of, and will maintain a list of such designees. (U)

r. "United States," when used to describe a place, includes the territories of the United States. (U)

s. "United States person" means

(1) a citizen of the United States;

(2) an alien lawfully admitted for permanent residence, provided that a person outside the United States may be presumed not to be a United States person until information to the contrary is obtained and provided, further, that an alien known to have been admitted for permanent residence in the United States may be presumed to have lost his status as a United States person if he leaves the United States and it is known that he is not in compliance with the administrative formalities provided by law (8 U.S.C. section 1203) that enable such persons to re-enter the United States without regard to the provisions of law that would otherwise restrict an alien's entry into the United States;

(3) an unincorporated association organized in the United States or substantially composed of United States citizens or aliens lawfully admitted for permanent residence; provided that unincorporated associations outside the United States may be presumed not to be United States persons until information to the contrary is obtained; or

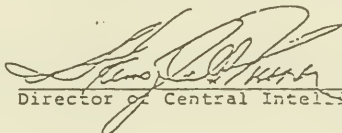
(4) a corporation incorporated in the United States. A corporation or corporate subsidiary incorporated abroad, even if partially or wholly owned by a corporation incorporated in the United States, is not a United States person.

A person in the United States shall be presumed to be a United States person unless information to the contrary is obtained. (U)

20. These procedures shall become effective 30 days from the date they are approved by the Attorney General. (U)

28 July 1979

Date


Director of Central Intelligence

I approve the foregoing procedures in accordance with subsections 2-203 of Executive Order 12036. In my opinion electronic or mechanical monitoring conducted pursuant to and in accordance with these procedures is lawfully undertaken and such monitoring is lawfully conducted as long as the manner of such conduct is reasonable and complies with these procedures. (U)

Date

Attorney General

12

~~SECRET~~

PROCEDURES RELATING TO CERTAIN
UNCONSENTED PHYSICAL SEARCHES AND MAIL OPENING
AND MAIL SURVEILLANCE ACTIVITIES DIRECTED AGAINST
UNITED STATES PERSONS (U)

For the purpose of implementing Sections 2-204 and 2-205 of Executive Order 12036, the Director of Central Intelligence (DCI) has established, and the Attorney General has approved, the following procedures relating to warrantless unconsented physical searches directed against United States persons outside the United States, the warrantless opening of mail in United States postal channels or sent by or intended to be received by a United States person, when such activities are conducted by the Central Intelligence Agency (CIA). (U)

PROHIBITIONS

1. CIA will not conduct any unconsented* physical searches within the United States. (U)

*Physical searches undertaken on the basis of 'consent' shall only be undertaken if (1) the subject of the search or, in the case of property or possessions, an authorized person has specifically consented, in writing if possible or orally, to being searched within a specific time frame and context; (2) (in the case of employees or visitors to government facilities) there is a visible posted notice on government property which clearly states that the place or object where the notice is posted is subject to a particular form of search or (3) (in the case of employees) the search is undertaken in accordance with published rules or regulations which are individually distributed to all such employees and the surveillance is otherwise reasonable. (U)

9. Nothing in these procedures shall authorize the examination of mail in United States postal channels except as such is in accordance with applicable statutes and regulations. (U)

12. When necessary, the request may be oral, and authorization may also be oral, but in these circumstances the request and authorization will be confirmed as promptly as possible in writing. (U)

13. All recommendations to the DCI that he request Attorney General approval will be forwarded through the General Counsel, or Acting General Counsel, CIA along with supporting information, for his determination that the recommendation conforms to the requirements of these procedures and is otherwise lawful. (U)

17. Nothing in these procedures precludes exceptions by specific written Presidential authorization to the extent the President has lawful authority to approve such exceptions. Any application for such exception will be forwarded by the DCI, after coordination with the General Counsel or Acting General Counsel, to the President through the Attorney General. (U)

18. Nothing in those procedures shall prohibit the retention or disclosure of information necessary for the purpose of determining or assuring whether the requirements of these procedures are satisfied. (U)

INTERPRETATION

20. All questions as to the coverage and interpretation of these procedures will be resolved by the General Counsel, CIA, in consultation where there is a significant new legal question, with the Department of Justice. The General Counsel shall have access to all information necessary to implement his responsibilities under these procedures. The DCI may modify these procedures upon the express approval of the Attorney General. (U)

DEFINITIONS

21. For the purposes of these procedures the term:

a. "Agent of a foreign power" means:

(1) A person who, for or on behalf of a foreign power, is engaged in clandestine intelligence activities (including clandestine activities intended to affect the political or governmental process), sabotage, or international terrorist activities, or who conspires with or knowingly aids or abets such a person in engaging in such activities;

(2) A person who is an officer or employee of a foreign power;

(3) A corporation or other entity that is owned or controlled directly or indirectly by a foreign power;

(4) A person acting in collaboration with an intelligence or security service of a foreign power who has, or has had, access to information or material classified by the United States; or

to the direction of a foreign power, provided that the fact that a person's activities may benefit or further the aims of a foreign power, standing alone, is not sufficient to support a finding that a person is acting for or pursuant to the direction of a foreign power. (U)

b. "Attorney General" includes the Acting Attorney General. (U)

c. "Available publicly" refers to information that any member of the public could lawfully obtain by request or casual observation, or information, including public communications, that is lawfully accessible to any member of the public. Nothing herein authorizes a search or surveillance that is otherwise regulated by Attorney General-approved procedures. (U)

d. "Clandestine intelligence activity" means an activity conducted for intelligence purposes or for the purpose of affecting political or governmental processes by or on behalf of a foreign power in a manner tending to conceal from the United States Government the nature or fact of such activity or the role of such foreign power, and any knowing activity conducted in support of such activity. (U)

*"Officer or employee of a foreign power" includes foreign nationals in the United States who are acting in an official capacity on behalf of a foreign power, attached to a foreign diplomatic establishment or an establishment under the control of a foreign power, or employed by a public international organization or organization established under an agreement to which the United States is a party. (U)

e. "Counterintelligence" means information gathered and activities conducted to protect against espionage and other clandestine intelligence activities, sabotage, international terrorist activities or assassinations conducted for or on behalf of foreign powers, organizations or persons, but not including personnel, physical, document, or communications security programs. (U)

f. "Director of Central Intelligence" or "DCI" includes the Acting Director of Central Intelligence. (U)

g. "Foreign intelligence" means information relating to the capabilities, intentions and activities of foreign powers, organizations or persons, but not including counterintelligence except for information or international terrorist activities. (U)

h. "Foreign power" means

(1) a foreign government or any component thereof, whether or not recognized by the United States;

(2) a faction of a foreign nation or nations, not substantially composed of United States persons;

(3) an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;

(4) a foreign-based group engaged in international terrorist activity and any other group engaged abroad in such activity; or

(5) a foreign-based political organization not substantially composed of United States persons.
(U)

i. "In United States postal channels" means:

(1) Mail while in transit within, among and between the United States (including mail of foreign origin which is passed by a foreign postal administration to the U. S. Postal Service for forwarding to a foreign postal administration under a postal treaty or convention and mail temporarily in the hands of the U.S. Customs Service or the Department of Agriculture); its territories and possessions; Army-Air Force (APO) and Navy (FPO) post offices and mail for delivery to the United Nations, N.Y.; and

(2) International mail enroute to an addressee in the United States or its possessions after passage to U.S. Postal Service from a foreign postal administration or enroute to an addressee abroad before passage to a foreign postal administration.

As a general rule, mail shall be considered in such postal channels until the moment it is manually delivered to the specific addressee in the United States named on the envelope or his authorized agent. (U)

j. "International terrorist activities" means any activity or activities which:

(1) Involves killing, causing serious bodily harm, kidnapping, or violent destruction of property, or an attempt or credible threat to commit such acts;

(2) Appears intended to endanger a protectee of the Secret Service or the Department of State or to further political, social or economic goals by intimidating or coercing a civilian population or any segment thereof, influencing the policy of a government or international organization by intimidation or coercion, or obtaining widespread publicity for a group or its cause; and

(3) Transcends national boundaries in terms of the means by which it is accomplished, the civilian population, government, or international organization it appears intended to coerce or intimidate, or the locale in which its perpetrators operate or seek asylum. (U)

k. "Probable cause" means a legal threshold which is satisfied by a determination that a belief or opinion held is one which would be shared by a reasonable person considering the facts and circumstances upon which such a belief or opinion is based. (U)

m. "Substantial participation" means requesting a search of a particular target or providing technical equipment, funds, or other services in support of a particular search. (U)

n. "Unconsented physical search" means a physical intrusion upon or search of a person or the person's property or possessions for purposes other than placing an electronic surveillance or electronic or mechanical monitoring device,* without the consent of the person or, in the case of property or possessions, of another individual who has authority to consent to such a search. This term includes the opening of any mail sent by or intended to be received by a United States person. (U)

o. "United States" when used to describe a place, includes the territories of the United States. (U)

p. "United States person" means:

(1) A citizen of the United States;

(2) An alien lawfully admitted for permanent residence, provided that a person outside the United States may be presumed not to be a United States person until information to the contrary is obtained and provided, further, that an alien known to have been admitted for permanent residence in the United States may be presumed to have lost his status as a United States person if he leaves the United States and it is known that he is not in compliance with the administrative formalities provided by law (8 U.S.C. section 1203) that enable such persons to re-enter the United States without regard to the provisions of law that would otherwise restrict an alien's entry into the United States;

(3) An unincorporated association organized in the United States or substantially composed of United States citizens or aliens lawfully admitted for permanent residence; provided that unincorporated associations outside the United States may be presumed not to be United States persons until information to the contrary is obtained; or

*The subjects of electronic surveillance and the use of electronic and mechanical monitoring devices are treated in other Attorney General procedures. (U)

States. A corporation or corporate subsidiary incorporated abroad, even if partially or wholly owned by a corporation incorporated in the United States, is not a United States person.

A person in the United States shall be presumed to be a United States person unless information to the contrary is obtained. (U)

g. "Users within CIA" means any CIA employee except those employees authorized to have access to the information solely for the purpose of determining whether the requirements of these procedures are satisfied. The only persons so authorized are:

(1) The person initially acquiring the information;

(2) A person in the direct chain of command, both abroad and within the United States, of the person initially acquiring the information and designated advisors thereto;

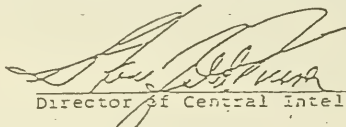
(3) The Inspector General and his designees; and;

(4) Attorneys in the Office of General Counsel. The Office of General Counsel will be apprised of and will maintain a list of designees. (U)

22. These procedures shall become effective 30 days after they are approved by the Attorney General. (U)

26 July 1979

Date



Director of Central Intelligence

I approve the foregoing procedures in accordance with Sections 2-204 and 2-205 of Executive Order 12036. In my opinion a physical search conducted pursuant to and in accordance with these procedures is lawfully undertaken and such a search is lawfully conducted as long as the manner of such conduct is reasonable and complies with these procedures. (U)

Date

Attorney General

PROCEDURES RELATING TO PHYSICAL SURVEILLANCE
OF UNITED STATES PERSONS

For the purpose of implementing Section 2-206 of Executive Order 12036, the Director of Central Intelligence (DCI) has established, and the Attorney General has approved, the following procedures relating to physical surveillance of United States persons. (U)

PROHIBITIONS

1. Except as provided in paragraph 3 below, within the United States CIA will not conduct physical surveillance directed against a United States person unless that, in the judgment of CIA, is the least intrusive means possible* to gather the information sought, the person being surveilled is a present CIA employee or a present CIA contractor or present employee of such contractor, and that person is being surveilled for the purpose of protecting foreign intelligence and counterintelligence sources and methods from unauthorized disclosure or is the subject of a lawful counterintelligence, personnel, physical or communications security investigation.** A person who is in contact with such a present employee or contractor may also be surveilled, but only to the extent necessary to identify that person.

2. Except as provided in paragraph 3 below, outside the United States CIA will not conduct a physical surveillance directed against a United States person unless that is the least intrusive means possible* to gather the information sought and:

*An intelligence activity shall be considered to use the least intrusive means possible under all the circumstances of the particular case if less intrusive means cannot acquire intelligence of the nature, reliability, and timeliness required. No method involving a greater intrusion shall be requested or approved unless it has been determined that a less intrusive means will not be reasonable in the specific situation. As a general rule electronic surveillance, surreptitious and continuous monitoring and unconsented physical searches shall be regarded as more intrusive techniques than physical surveillance or other means of obtaining information which is not publicly available. Microphonic surveillance shall be considered more intrusive than telephonic surveillance and surveillance of private residential property shall be regarded as more intrusive than similar surveillances of business property. (U)

**Permitted physical surveillance within the United States does not have to be coordinated with the FBI. (U)

a. The person being surveilled is reasonably believed to be acting on behalf of a foreign power, engaging in international terrorist activities, or engaging in narcotics production or trafficking; provided, however, that a physical surveillance of a United States person reasonably believed to be engaged in narcotics production or trafficking will be undertaken only for the purpose of acquiring intelligence information about such production or trafficking and not for the purpose of acquiring information to be used in a criminal prosecution; or

b. The person being surveilled is a present or former employee, present or former intelligence agency contractor or present or former employee of such contractor, or military person or a civilian person employed by a nonintelligence element of any such intelligence agency, and that person is being surveilled for the purpose of protecting foreign intelligence and counterintelligence sources and methods from unauthorized disclosure or is the subject of a lawful counterintelligence, personnel, physical or communications security investigation. A person who is in contact with such a present or former employee or contractor may also be surveilled, but only to the extent necessary to identify that person.

3. In addition to situations covered by paragraphs 1 and 2 above, CIA may conduct a physical surveillance of a United States person when that surveillance is conducted solely for the purpose of identifying a person who is in contact with someone who is the subject of a lawful foreign intelligence or counterintelligence investigation and is the least intrusive means available to collect the information sought. (U)

4. CIA will not request or otherwise encourage, directly or indirectly, any person, organization or government agency to undertake any activity prohibited under these procedures. Any substantial participation by CIA in a physical surveillance directed against a United States person by a foreign person or organization will be subject to these procedures as if CIA were undertaking the surveillance solely by itself.

5. CIA will not store, or disseminate outside of CIA, information acquired by physical surveillance of a United States person except as provided in the Attorney General-approved CIA procedures (those for Section 2-208 of E.O. 12036) governing the collection, storage and dissemination of nonpublicly available information concerning such persons.

APPROVAL PROCEDURES FOR PERMITTED ACTIVITIES

7. Requests for approval of a physical surveillance of a United States person will contain a statement of the facts and circumstances relied upon to justify a reasonable belief that the criteria as set forth in either paragraph 1 or 2 above is satisfied. No request or approval is necessary for a surveillance conducted pursuant to paragraph 3 above.

8. When necessary, the request may be oral, and authorization may also be oral, but in these circumstances the request and authorization will be confirmed as promptly in writing. (U)

9. All requests to a senior CIA official for approval will be subject to, but not require, the review of the General Counsel or Acting General Counsel. An information copy of the approval documentation will be furnished to the General Counsel as soon after approval as practical. (U)

11. When, in emergency situations, it is reasonably believed that the time required to secure the prior approval of a designated senior official would cause failure or delay in obtaining information meeting the criteria set forth in either paragraph 1 or 2 above, and such failure or delay would result in substantial harm to the national security, other senior CIA officials, designated, in writing by the DCI, may authorize a physical surveillance of a United States person reasonably believed to meet the criteria in one of those two paragraphs. In those cases in which senior officials approve such emergency surveillance the General

Counsel shall be notified as soon as possible of the circumstances surrounding the authorization, and the results of the surveillance. Nothing in these procedures will be construed to prohibit physical surveillance where a person's life is reasonably believed to be in imminent danger provided that approval of the most senior official possible should be obtained if time

permits. Surveillance conducted pursuant to any such emergency authorization is otherwise subject to the restrictions and criteria outlined herein. For this purpose senior officials are chiefs of CIA stations, bases and installations outside CIA Headquarters and, as determined by the DCI or DDCI, those employees at CIA Headquarters with equivalent or superior authority or responsibility.

12. Nothing in these procedures shall prohibit the retention or disclosure of information necessary for the purpose of determining or assuring whether the requirements of these procedures are satisfied. (U)

13. Nothing in these procedures precludes exceptions by specific written Presidential authorization to the extent that the President has lawful authority to approve such exceptions. Any application for such exception will be forwarded by the DCI, after coordination with the General Counsel or Acting General Counsel, to the President through the Attorney General. (U)

14. Nothing in these procedures shall preclude CIA from requesting the FBI to conduct physical surveillance that the CIA is precluded from conducting as long as the FBI is not precluded by law from such. Any such CIA request will be made by the DDO or DDA to the Director, FBI or his designee and will contain a certification that such assistance is relevant to the mission of the CIA, and statements that (a) describe the support required, (b) explain the reasons why the Bureau is being requested to furnish such assistance, and (c) provides such further information as may be required to justify the surveillance. (U)

INTERPRETATION

15. All questions as to the coverage and interpretation of these procedures will be resolved by the General Counsel, in consultation where there is significant new legal question, with the Department of Justice. The General Counsel shall have access to all information necessary to implement his responsibilities under these procedures. The DCI may modify these procedures upon the express approval of the Attorney General. (U)

16. For the purposes of these procedures the term:

a. "Acting on behalf of a foreign power" includes but is not limited to all activities of an "agent of a foreign power" when a person is acting in that capacity. (U)

b. "A lawful counterintelligence, personnel, physical or communications security investigation" shall be interpreted as follows:

Counterintelligence investigations will be limited to those cases in which facts and circumstances indicate that the person is engaged in clandestine intelligence activities on behalf of a foreign power or international terrorist activity and collection is conducted to fulfill a lawful function of CIA.

Personnel security investigations involve inquiries into the activities of a person granted access to intelligence or a person to be assigned or retained in a position with sensitive duties. These investigations are designed to develop information pertaining to the suitability, eligibility and trustworthiness of the individual with respect to loyalty, character, emotional stability and reliability.

Physical security investigations involve inquiries into or surveys of the effectiveness of security controls and procedures established to protect equipment, property or classified information. Security controls and procedures include physical controls established around the perimeter of a facility, building or office; controls established with respect to the equipment or other property; procedures governing access by visitors and procedures related to access to intelligence information by persons other than employees; procedures and controls related to the safe storage and transmittal of classified information including cryptographic information, materials and equipment, procedures limiting employee access to classified information on a need-to-know basis; and procedures and controls related to the disposal of classified equipment and wastes. Physical security investigations include actions undertaken against United States persons who are present upon, or are in physical proximity to, an installation or facility of a CIA activity or operation and who are reasonably believed to pose a clear threat to the physical safety

of personnel or property. These investigations will be limited to collecting information about persons who are:

- (1) discovered in CIA premises or on a CIA installation or facility without authorization;
- (2) discovered in a portion of a CIA installation or facility under such circumstances as to cause a reasonable belief that such person is violating or about to violate law or regulation relating to the protection of classified information;
- (3) reasonably believed to be engaging in an activity that is directed at or will result in unauthorized entry into, or damage to a CIA installation or facility or to the security thereof, or
- (4) reasonably believed to jeopardize a CIA operation or activity because of physical proximity thereto.

Communications security investigations involve inquiries into or surveys of the protective measures taken to deny unauthorized persons information derived from telecommunications. (U)

c. "Agent of a foreign power" means

- (1) a person who, for or on behalf of a foreign power, is engaged in clandestine intelligence activities (including clandestine activities intended to affect the political or governmental process), sabotage, or international terrorist activities, or who conspires with or knowingly aids or abets such a person in engaging in such activities;
- (2) A person who is an officer or employee of a foreign power*;
- (3) a corporation or other entity that is owned or controlled directly or indirectly by a foreign power;

* "Officer or employee of a foreign power" includes foreign nationals in the United States who are acting in an official capacity on behalf of a foreign power, attached to a foreign diplomatic establishment or an establishment under the control of a foreign power, or employed by a public international organization or organization established under an agreement to which the United States is a party. (U)

intelligence or security service of a foreign power who has, or has had, access to information or material classified by the United States; or

(5) a person unlawfully acting for or pursuant to the direction of a foreign power, provided that the fact that a person's activities may benefit or further the aims of a foreign power, standing alone, is not sufficient to support a finding that a person is acting for or pursuant to the direction of a foreign power. (U)

d. "Attorney General" includes the Acting Attorney General.

e. "Available publicly" refers to information that any member of the public could lawfully obtain by request or casual observation, or information, including public communications, that is lawfully accessible to any member of the public. Nothing herein authorizes a search or surveillance that is otherwise regulated by Attorney General-approved procedures. (U)

f. "Central Intelligence Agency" and "CIA" include staff elements of the Office of the Director of Central Intelligence. (U)

g. "Clandestine intelligence activity" means an activity conducted for intelligence purposes or for the purpose of affecting political or governmental processes by or on behalf of a foreign power in a manner tending to conceal from the United States Government the nature or fact of such activity or the role of such foreign power, and any knowing activity conducted in support of such activity. (U)

h. "Counterintelligence" means information gathered and activities conducted to protect against espionage and other clandestine intelligence activities, sabotage, international terrorist activities or assassinations conducted for or on behalf of foreign powers, organizations or persons, but not including personnel, physical, document, or communications security programs. (U)

i. "Deputy Director for Operations" or "DDO" and "Deputy Director for Administration" or "DDA" include the Acting Deputy Director for Operations and the Acting Deputy Director for Administration. (U)

j. "Director of Central Intelligence" or "DCI" includes the Acting Director of Central Intelligence. (U)

k. "Employee" means a person employed by, assigned to, or acting for an agency within the Intelligence Community. (U)

l. "Foreign intelligence" means information relating to the capabilities, intentions and activities of foreign powers, organizations or persons, but not including counterintelligence except for information or international terrorist activities. (U)

m. "Foreign power" means:

(1) A foreign government or any component thereof, whether or not recognized by the United States;

(2) A faction of a foreign nation or nations, not substantially composed of United States persons;

(3) An entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;

(4) A foreign-based group engaged in international terrorist activity and any other group engaged in such activity; or

(5) A foreign-based political organization not substantially composed of United States persons. (U)

n. "International terrorist activities" means any activity or activities which:

(1) Involves killing, causing serious bodily harm, kidnapping, or violent destruction of property, or an attempt or credible threat to commit such acts;

(2) Appears intended to endanger a protectee of the Secret Service or the Department of State or to further political, social or economic goals by intimidating or coercing a civilian population or any segment thereof, influencing the policy of a government or international organization by intimidation or coercion, or obtaining widespread publicity for a group or its cause; and

(3) Transcends national boundaries in terms of the means by which it is accomplished, the civilian population, government, international organization it appears intended to coerce or intimidate, or the locale in which its perpetrators operate or seek asylum. (U)

*Physical surveillance undertaken on the basis of 'consent' shall only be undertaken if (1) the subject of the surveillance has specifically consented, in writing if possible or orally, to that surveillance; (2) (in the case of employees or visitors to government facilities) there is a visible posted notice on government property which clearly states that the place or object where the notice is posted is subject to a particular form of surveillance and the surveillance is otherwise reasonable; or (3) (in the case of employees) the surveillance is undertaken in accordance with published rules or regulations which are individually distributed to all such employees and the surveillance is otherwise reasonable. (U)

**Electronic surveillance is governed by other Attorney General-approved procedures. (U)

q. "Substantial participation" means requesting surveillance of a particular target or providing technical equipment, funds, or other services in support of a particular surveillance. (U)

r. "United States" when used to describe a place, includes the territories of the United States. (U)

s. "United States person" means:

(1) A citizen of the United States;

(2) An alien lawfully admitted for permanent residence, provided that a person outside the United States may be presumed not to be a United States person until information to the contrary is obtained and provided, further, that an alien known to have been admitted for permanent residence in the United States may be presumed to have lost his status as an United States person if he leaves the United States and it is known that he is not in compliance with administrative formalities provided by law (8 U.S.C. section 1203) that enable such persons to re-enter the United States without regard to the provisions of law that could otherwise restrict an alien's entry into the United States;

in the United States or substantially composed of United States citizens or aliens lawfully admitted for permanent residence; provided that unincorporated associations outside the United States may be presumed not to be United States persons until information to the contrary is obtained; or

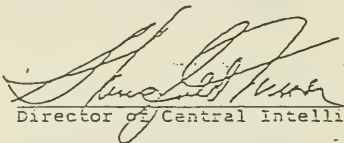
(4) A corporation incorporated in the United States. A corporation or corporate subsidiary incorporated abroad, even if partially or wholly owned by a corporation incorporated in the United States, is not a United States person. (U)

16. These procedures shall become effective 30 days from the date they are approved by the Attorney General.

(U)

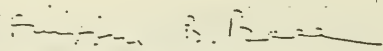
28 July 1979

Date


Director of Central Intelligence

I approve the foregoing procedures in accordance with subsection 2-206 of Executive Order 12036. In my opinion physical surveillance conducted pursuant to and in accordance with these procedures is lawfully undertaken and such surveillance is lawfully conducted as long as the manner of such conduct is reasonable and complies with these procedures. (U)


Date


Attorney General

PROCEDURES RELATING TO THE COLLECTION,
STORAGE AND DISSEMINATION OF INFORMATION
CONCERNING THE ACTIVITIES OF UNITED STATES PERSONS

For the purpose of implementing Section 2-208 of Executive Order 12036, the Director of Central Intelligence (DCI) has established, and the Attorney General has approved, the following procedures relating to the Central Intelligence Agency's (CIA's) collection, storage and dissemination of information which is not publicly available* concerning the activities of United States persons, without the consent of such persons.

CRITERIA

1. CIA will not collect, store or disseminate information that is not available publicly concerning the activities of United States persons without their consent** unless such collection, storage and dissemination is permitted by these procedures and unless such information falls within one or more of the following categories:

a. Information concerning corporations or other commercial organizations or activities that constitutes foreign intelligence or counterintelligence, including information that (1) identifies such corporations or other commercial organizations as manufacturers of equipment or related nomenclature or (2) if deleted would hamper the correlation of information on the same subject obtained from other sources or impede the effective targeting of intelligence requirements for other sources; an organization that uses the words "Inc.", "Corp.", "Co.", "Ltd." or other common commercial designation in its name may be presumed to be a commercial organization unless information to the contrary is obtained. CA CC

*Publicly available information concerning the activities of United States persons, and information of this kind that is not publicly available but that has been collected with the consent of the U.S. person concerned, may be collected, stored and disseminated whenever such information is relevant to any authorized function of CIA.

**Consent to collect implies consent to store. Dissemination of information collected pursuant to consent must meet the dissemination criteria of these procedures unless consent is obtained for their dissemination. Any person or organization who solicits business from CIA or who actually engages in the provision of goods or services to CIA consents to the collection of information by CIA concerning financial or business factors which is normally collected without specific authorization by private commercial organizations which are furnished similar goods and services.

APPROVED FOR RELEASE
DATE 8 APR 1980

b. Information arising out of a lawful counterintelligence or personnel physical or communications security investigation including information needed to understand or assess such investigations, information indicating that a United States person may be a target of the intelligence activities of a foreign power, and information indicating that a United States person is engaging in the unauthorized disclosure of properly classified national security information.

Counterintelligence investigations will be limited to those cases in which:

(a) facts and circumstances indicate that the person is or may be engaged in clandestine intelligence activities on behalf of a foreign power or international terrorist activity;

(b) collection is conducted to fulfill a lawful function of CIA; and

(c) collection involving use of electronic surveillance, certain surreptitious and continuous electronic or mechanical monitoring, unconsented physical searches and mail surveillance, physical surveillance and undisclosed participation in domestic organizations is conducted only in accordance with the Attorney General approved procedures for those subjects.

Personnel security investigations involve inquiries into the activities of a person granted access to intelligence or a person to be assigned or retained in a position with sensitive duties. These investigations are designed to develop information pertaining to the suitability, eligibility and trustworthiness of the individual with respect to loyalty, character, emotional stability and reliability. These investigations will be limited to collecting information about present or former CIA employees, present or former employees of CIA contractors, or applicants for such employment.

*Counterintelligence investigations within the United States can be conducted only in accordance with procedures for Section 1-805 of E.O. 12036.

Physical security investigations involve inquiries into or surveys of the effectiveness of security controls and procedures established to protect equipment, property or classified information. Security controls and procedures include physical controls established around the perimeter of a facility, building or office; controls established with respect to the equipment or other property; procedures governing access by visitors and procedures related to access to intelligence information by persons other than employees; procedures and controls related to the safe storage and transmittal of classified information including cryptographic information, materials and equipment; procedures limiting employee access to classified information on a need-to-know basis; and procedures and controls related to the disposal of classified equipment and wastes. Physical security investigations include inquiries and other actions undertaken against United States persons who are present upon, or are in physical proximity to, an installation or facility of a CIA activity or operation and who are reasonably believed to pose a clear threat to the physical safety of personnel or property. These investigations will be limited to collecting information about persons who are:

(1) discovered in CIA premises or on a CIA installation or facility without authorization;

(2) discovered in a portion of a CIA installation or facility under such circumstances as to cause a reasonable belief that such person is violating or about to violate law or regulation relating to the protection of classified information;

(3) reasonably believed to be engaging in an activity that is directed at or will result in unauthorized entry into, or damage to a CIA installation or facility or to the security thereof, or

(4) reasonably believed to jeopardize a CIA operation or activity because of physical proximity thereto.

Communications security investigations involve inquiries into or surveys of the protective measures taken to deny unauthorized persons information derived from telecommunications.

c. Information concerning present or former employees; present or former intelligence agency contractors or their present or former employees; or applicants for any such employment or contracting, which is needed to protect foreign intelligence or counterintelligence sources or methods from unauthorized disclosure;

d. Information needed solely to identify individuals in contact with those persons described in paragraph c. immediately above or with someone who is the subject of a lawful foreign intelligence or counterintelligence investigation;

e. Information concerning persons who are reasonably believed to be potential sources or contacts, but only for the purpose of determining the suitability or credibility of such persons;

f. Information constituting foreign intelligence or counterintelligence gathered abroad or from electronic surveillance conducted in conformance with approved procedures or from cooperating sources in the United States; cooperating sources means anyone who volunteers information or anyone who, upon being asked by anyone identifying the request as on behalf of CIA, gives the information voluntarily. "From cooperating sources" does not authorize CIA to request that a source collect information about the domestic activities of a United States person from that person without the source revealing to that person that the source is acting on behalf of CIA.

g. Information about a person who is reasonably believed to be:

- (1) acting on behalf of a foreign power;
- (2) engaging in international terrorist activities;
- (3) engaging in narcotics production or trafficking; or
- (4) endangering the safety of a person protected by the United States Secret Service or the Department of State;

h. Information acquired by overhead reconnaissance not directed at specific United States persons;

1. Information concerning United States persons abroad that is obtained in response to requests from the Department of State for support of its consular responsibilities relating to the welfare of those persons; or

j. Information concerning persons or activities that pose a clear threat to Intelligence Community facilities or personnel. CIA may store only such information relating to threats to CIA facilities or personnel.

2. CIA will not request or encourage any person or organization to collect, store or disseminate on CIA's behalf any information concerning the activities of United States persons unless it meets the criteria set forth in paragraph 1 immediately above.

3. Where doubt exists as to whether particular information meets the criteria, the question should be referred through the chain of command. All questions which present new or significant legal issues as to whether a particular type of information meets the criteria will be referred to the General Counsel.

AUTHORIZED COLLECTION OF NONPUBLICLY AVAILABLE INFORMATION

4. Scope. These collection procedures deal only with purposeful collection* of information that is not available publicly concerning the activities of a United States person who has not consented to such collection. Purposeful collection occurs when such information is acquired as a result of collection activities intended to acquire information about the particular United States person. Incidental collection occurs when such information is acquired concerning the activities of a United States person who is not the subject of purposeful collection. Incidental collection includes such information being voluntarily imparted to CIA without CIA's solicitation.

*Collection by electronic surveillance, as well as storage and dissemination of the information collected by that technique, is exclusively governed by the procedures regulating that subject. Collection by certain surreptitious and continuous electronic or mechanical monitoring, unconsented physical searches and mail surveillance, physical surveillance and undisclosed participation in domestic organizations are governed by procedures regulating those subjects as are certain foreign intelligence and counterintelligence activities within the United States. Those procedures do not authorize collection not permitted here but further restrict collection authority. Collection by examination of tax returns or tax information will be done only to the extent permitted by applicable law.

Information obtained through incidental collection will be treated in accordance with the storage and dissemination procedures herein.

Purposeful Collection

5. Purposeful collection of information that concerns the activities of a United States person and that is not available publicly may be conducted on an unconsented basis if it meets one or more of the criteria of paragraph 1 above and if it is collected within the limitations set forth in paragraph 6 below and in accordance with the approval procedures set forth in paragraph 7 below.

6. Limitations. Such purposeful collection will be subject to the following limitations:

a. No such collection will be clandestinely undertaken in the United States for foreign intelligence purposes provided, however, that clandestine collection in the United States can be undertaken for determining the suitability or credibility of an individual; for lawful counterintelligence, personnel, physical or communications security investigation purposes; involving cooperating sources in the United States; or about a person who is reasonably believed to be acting on behalf of a foreign power, engaging in international terrorist activities or narcotics production or trafficking, or endangering the safety of a person protected by the United States Secret Service or the Department of State. Collection of information in the United States is also governed by procedures under Section 1-805 of E.O. 12036.

b. No such collection will be undertaken unless it is conducted by the least intrusive means possible* that in the judgment of CIA will be effective for such collection.

*An intelligence activity shall be considered to use the least intrusive means possible under all the circumstances of the particular case if less intrusive means cannot acquire intelligence of the nature, reliability, and timeliness required. No method involving a greater intrusion shall be requested or approved unless it has been determined that a less intrusive means will not be reasonable in the specific situation. As a general rule electronic surveillance, surreptitious and continuous monitoring and unconsented physical searches shall be regarded as more intrusive techniques than physical surveillance or other means of obtaining information that is not available publicly. Microphonic surveillance shall be considered more intrusive than telephonic surveillance and surveillances of private residential property shall be regarded as more intrusive than similar surveillances of business property.

c. No such collection will be undertaken in the exercise of police, subpoena or law enforcement powers or internal security functions.

d. Collection of information for the purpose of determining suitability or credibility on security grounds of potential sources or contacts will be limited to lawful records checks. Collection of information relating to the suitability or credibility, on other than security grounds, of a person who is a potential source or contact shall be reasonably limited in scope, intensity and duration to accomplish the sole purpose of determining whether to initiate a security suitability investigation and to seek such person's cooperation. Collection of information for the purpose of establishing or confirming identity or commercial reliability will be limited to lawful records checks and interviews or inquiries in which CIA's interest may not be disclosed.

e. Approvals granted pursuant to paragraph 7 below will be valid for no more than 180 days after which a renewal shall be required for continuation. All such renewals shall be subject to the same criteria as the original approval.

7. Approval procedures. The purposeful collection of nonpublicly available information that concerns the activities of United States persons will be subject to the following approval conditions and procedures:

a. Collection will be approved on a case-by-case basis* by senior officials designated in writing by the DCI or DDCI. For this purpose senior officials are the chiefs of CIA stations, bases and installations outside of CIA Headquarters and employees at CIA Headquarters with, as determined by the DCI or DDCI, equivalent or superior responsibility or authority.

b. All requests for approval will, to the extent known, contain a statement outlining all prior decisions relating to the current request. A designated official will approve such collection only pursuant to his determination that there is positive authority for CIA to undertake such collection, and that there is evidence that the collection will produce the type of information CIA is authorized to collect as specified in paragraph 1 above and will comply with the limitations specified in paragraph 6 above.

*Individual approvals on a case-by-case basis are not required for security suitability or credibility investigations that only involve routine checks of the records of other Federal agencies (National Agency Checks), or state or local police authorities.

c. Requests for approval pursuant to this paragraph will include a statement of the positive authority relied upon for the unconsented collection; a statement of the facts and circumstances indicating that the collection will produce the type of information that CIA is authorized to collect, as specified in paragraph 1 above, that collection is by the least intrusive means possible that are likely to produce the information sought and that the subject of such collection cannot be advised of CIA's interest because such notification would frustrate the collection or jeopardize or compromise a CIA activity or operation.

d. Requests for approval pursuant to this paragraph will be forwarded through the General Counsel whenever there is a legal question as to whether the requested collection is authorized by these procedures.

e. Requests for approval pursuant to this paragraph, when necessary, may be oral, and the authorization may also be oral, but in these circumstances the request and authorization will be confirmed in writing as soon as possible.

STORAGE OF INFORMATION

Scope

8. These procedures deal with the knowing storage of nonpublicly available information concerning the activities of United States persons, whether purposefully or incidentally collected on an unconsented basis.

Previously Collected Information

9. Other than for dissemination purposes such information collected prior to the date of the Attorney General's approval of these procedures but collected in accordance with Executive Orders 12036 or 11905 or other rules of law applicable at the time of collection, will not have to be reviewed to determine if it meets one or more of the categories specified in paragraph 1 above.

*See the relevant footnote associated with paragraph 6.

New Information (Not Yet Stored)

10. Such information stored by CIA after the date of the Attorney General's approval of these procedures will meet the criteria specified in paragraph 1 above and will be relevant to an authorized function of CIA. Such information that does not meet that criteria and that which is not relevant to an authorized function of CIA will be destroyed, except when one or more of the following conditions apply:

a. The temporary retention of such information for a period not to exceed 180 days, is authorized solely for the purpose of determining whether, either alone or in conjunction with other information, it meets the criteria specified in paragraph 1 above.

b. Such information may be stored in such a manner that it cannot be retrieved by reference to the name or other identifying data of the United States person to whom it relates.

c. Such information that is suspected to be enciphered or to contain a secret meaning may be stored until deciphered or until its true meaning is ascertained and may be stored indefinitely thereafter for technical data base purposes; however once such information is determined not to be enciphered or to contain a secret meaning, it will be destroyed unless it otherwise qualifies within the scope of another category of this paragraph.

11. Notwithstanding paragraph 10, information related to security suitability or credibility of potential sources or contacts may be stored for that purpose. Information about the suitability or credibility may not be stored so that it is retrievable by name if the individual concerned is not contacted for use within one year from the completion of the collection or upon being contacted, refuses or declines to be a source or contact.

DISSEMINATION OF INFORMATION

12. Scope. These procedures deal with the knowing dissemination of nonpublicly available information concerning the activities of United States persons, whether purposefully or incidentally collected on an unconsented basis.

13. Such information may be disseminated within CIA only to those employees who have a need to know in the course of their official duties. Such information may also be disseminated outside of CIA where it is relevant to authorized functions performed by the persons or entities to whom it is to be disseminated and where it meets one or more of the following conditions:

a. Such information which meets the criteria of paragraph 1 above that is stored by CIA may be disseminated to agencies within the Intelligence Community or to entities of cooperating foreign governments if such agencies or entities agree to such further restrictions on dissemination as might be required.

b. Such information that indicates involvement in activities that may violate federal, state, local or foreign laws may be disseminated* to appropriate law enforcement agencies having jurisdiction or responsibility for the investigation or prosecution of such activity, provided that no such information will be disseminated to the Law Enforcement Assistance Administration except through the FBI.

c. Information relating to the security suitability or credibility of potential sources or contacts may be disseminated to another United States intelligence entity that has expressed a need or interest in obtaining assistance from such individual or organization.

d. Information relating to the trustworthiness or suitability of any United States person may be disseminated to any department or agency that has granted or is considering whether to grant any such person a security clearance or access to classified information, or to any agency having a responsibility to investigate such a person for the purpose of determining whether such clearance or access should be granted.

e. The dissemination of such information for reasons other than those set forth in a-d immediately above may be conducted if the DCI or DDCI determines that such dissemination is necessary to a lawful activity of the United States and the Attorney General or his designee determines that such dissemination is lawful.

Information that contains evidence of possible violations of federal criminal law required to be reported to the Attorney General pursuant to section 1-706 of E.O. 12036 and the guidelines pursuant thereto will be disseminated as required thereby.

14. The identity of the United States person or persons involved in such information may be included where it is necessary to understanding or assessing that information which is to be disseminated. If the identity is not necessary, it will be replaced with a generic term. The identity of the United States person includes the name or other personal identifying data relating to such person.

15. Nothing in these procedures permit dissemination of nonpublicly available information concerning the activities of United States persons collected without their consent if that dissemination is otherwise prohibited by law.

GENERAL EXCEPTIONS

16. Nothing in these procedures shall be construed to prohibit, where a person's life or physical safety is reasonably believed to be in imminent danger, the collection, storage or dissemination of information concerning United States persons that is relevant to such danger or the prevention, reduction, or elimination thereof.

17. Nothing in these procedures shall be construed to prohibit the storage or dissemination of information necessary for the purposes of oversight, accountability or redress, which is relevant to any administrative, civil or criminal proceeding or purpose of which CIA has prior notice or which is required by law to be retained. Dissemination of such information shall be limited to that necessary for such purposes or proceedings. Administrative purposes are those related to contracting, building maintenance, construction, fiscal matters, internal accounting procedures, disciplinary matters, legal matters, public affairs, legislative affairs and other matters not related to intelligence or security.

18. Information as addressed in these procedures does not concern "the activities of United States persons" if it involves only the name, title (if any), address, date and place of birth and/or physical description of a natural person or the name, address, characterization (e.g., industrial firm, fraternal organization, charitable organization) and/or identity of the officers of an organization. When the name of a United States person is included in the brand name, the name of a military or political doctrine or other descriptive figures of speech that do not disclose information about the United States person, the information may be treated in the same manner as if it were replaced with a generic term.

INTERPRETATION

19. All questions as to the coverage and interpretation of these procedures will be resolved by the General Counsel, in consultation where there is a significant new legal question with the Department of Justice. The DCI may modify these procedures upon the express approval of the Attorney General.

DEFINITIONS

20. For the purposes of these procedures the term:

a. "Acting on behalf of a foreign power" includes but is not limited to all activities of an "agent of a foreign power" when a person is acting in that capacity.

b. "Agencies within the Intelligence Community" refers to the following organizations:

- (1) The CIA;
- (2) The National Security Agency;
- (3) The Defense Intelligence Agency;
- (4) The Offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;
- (5) The Bureau of Intelligence and Research of the Department of State;
- (6) The intelligence elements of the military services, the FBI, the Department of the Treasury, the Department of Energy, and the Drug Enforcement Administration; and
- (7) The staff elements of the Office of the DCI.

c. "Agent of a foreign power" means

(1) a person who, for or on behalf of a foreign power, is engaged in clandestine intelligence activities (including clandestine activities intended to affect the political or governmental process), sabotage, or international terrorist activities, or who conspires with or knowingly aids or abets such a person in engaging in such activities;

(2) a person who is an officer or employee of a foreign power;

"Officer or employee of a foreign power" includes foreign nationals in the United States who are acting in an official capacity on behalf of a foreign power, attached to a foreign diplomatic establishment or an establishment under the control of a foreign power, or employed by a public international organization or organization established under an agreement to which the United States is a party.

(3) a corporation or other entity that is owned or controlled directly or indirectly by a foreign power;

(4) a person acting in collaboration with an intelligence or security service of a foreign power who has, or has had, access to information or material classified by the United States; or

(5) a person unlawfully acting for or pursuant to the direction of a foreign power, provided that the fact that a person's activities may benefit, or further the aims of a foreign power, standing alone, is not sufficient to support a finding that a person is acting for or pursuant to the direction of a foreign power.

d. "Attorney General" includes the Acting Attorney General.

e. "Available publicly" refers to information that any member of the public could lawfully obtain by request or casual observation, or information, including public communications, that is lawfully accessible to any member of the public. Nothing herein authorizes a search or surveillance that is otherwise regulated by Attorney General-approved procedures.

f. "Central Intelligence Agency" and "CIA" include the staff elements of the Office of the Director of Central Intelligence.

g. "Clandestine intelligence activity" means an activity conducted for intelligence purposes or for the purpose of affecting political or governmental processes by or on behalf of a foreign power in a manner tending to conceal from the United States Government the nature or fact of such activity or the role of such foreign power, and any knowing activity conducted in support of such activity.

h. "Contact" in the context of "an individual in contact" means a reasonable belief that there has been intentional communication between two persons, either directly or through one or more intermediaries.

i. "Counterintelligence" means information gathered and activities conducted to protect against espionage and other clandestine intelligence activities, sabotage, and international terrorist activities or assassinations conducted for or on behalf of foreign

powers, organizations or persons, but not including personnel, physical, document, or communications security programs.

j. "Deputy Director of Central Intelligence" or "DDCI" includes the Acting Deputy Director of Central Intelligence.

k. "Director of Central Intelligence" or "DCI" includes the Acting Director of Central Intelligence.

l. "Employee" means a person employed by, assigned to, or acting for an agency within the Intelligence Community.

m. "Foreign power" means

(1) a foreign government or any component thereof, whether or not recognized by the United States;

(2) a faction of a foreign nation or nations, not substantially composed of United States persons;

(3) an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;

(4) a foreign-based group engaged in international terrorist activity and any other group engaged abroad in any such activity; or

(5) a foreign-based political organization not substantially composed of United States persons.

n. "Foreign intelligence" means information relating to the capabilities, intentions and activities of foreign powers, organizations or persons, but not including counterintelligence except for information on international terrorist activities.

o. "Information that is stored" occurs when information is organized in such a way that it may be retrieved by reference to the name or identity of the United States person who is the subject of that information.

P. "International terrorist activities" means any activity or activities which:

(1) involves killing, causing serious bodily harm, kidnapping, or violent destruction of property, or an attempt or credible threat to commit such acts;

(2) appears intended to endanger a protectee of the Secret Service or the Department of State or to further political, social or economic goals by intimidating or coercing a civilian population or any segment thereof, influencing the policy of a government or international organization by intimidation or coercion, or obtaining widespread publicity for a group or its cause; and

(3) transcends national boundaries in terms of the means by which it is accomplished, the civilian population, government, or international organization it appears intended to coerce or intimidate, or the locale in which its perpetrators operate or seek asylum.

q. "A potential contact" is a person who is situated by acquaintance, friendship, affiliation, position or other factor so as to be able to have contact with a potential source.

r. "A potential source" is a person who is situated by knowledge, training, experience, position or responsibility so as to have access to or be able to obtain or develop foreign intelligence, counterintelligence or narcotics production or trafficking information.

s. "Public Communications" means communications transmitted within frequency bands devoted to FM, television and other broadcasts; amateur and CB communications; police, fire, ambulance, navigational aid and distress, and other public service transmissions; and aircraft and maritime communications not connected with land-based telephone lines.

t. "United States," when used to describe a place, includes the territories of the United States.

u. "United States person" means

(1) a citizen of the United States;

(2) an alien lawfully admitted for permanent residence, provided that a person outside the United States may be presumed not to be a United States person until information to the contrary is obtained and provided, further, that an alien known to have been admitted for permanent residence in the United States may be presumed to have lost his status as a United States person if he leaves the United States and it is known that he is not in compliance with the administrative formalities provided by law (8 U.S.C. section 1203) that enable such persons to re-enter the United States without regard to the provisions of law that would otherwise restrict an alien's entry into the United States;

(3) an unincorporated association organized in the United States or substantially composed of United States citizens or aliens lawfully admitted for permanent residence; provided that unincorporated associations outside the United States may be presumed not to be United States persons until information to the contrary is obtained; or

(4) a corporation incorporated in the United States. A corporation or corporate subsidiary incorporated abroad, even if partially or wholly owned by a corporation incorporated in the United States, is not a United States person.

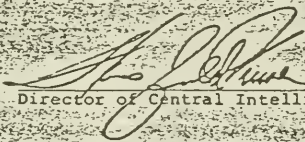
A person in the United States shall be presumed to be a United States person unless information to the contrary is obtained.

20. Activities undertaken on the basis of "consent" shall only be undertaken if: (1) the subject of the activity has specifically consented, in writing if possible or orally, to that activity; (2) (in the case of employees or visitors to government facilities) there is a visible posted notice on government property which clearly states that the place or object where the notice is posted is subject to a particular form of search or surveillance; (3) (in the case of employees) the activity is undertaken in accordance with published rules or regulations which are individually distributed to all such employees or; (4) the subject of a lawful investigation has either authorized an agency employee to undertake that activity regardless of the subject's knowledge of the employee's agency affiliation.

21. These procedures shall become effective 30 days from the date they are approved by the Attorney General.

28 July 1979

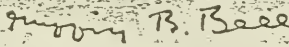
Date


Director of Central Intelligence

I approve the foregoing procedures in accordance with subsection 2-208 of Executive Order 12036. In my opinion these procedures are lawful and comply with the provisions of Executive Order 12036 and the National Security Act of 1947, as amended.

August 10, 1979

Date



Attorney General



Office of the Attorney General
Washington, D. C. 20530

REPORTING OF FEDERAL CRIMES COMMITTED
BY OFFICERS OR EMPLOYEES OF AGENCIES
IN THE INTELLIGENCE COMMUNITY

Executive Order 12036, § 1-706, requires senior
officials of the intelligence community to:

Report to the Attorney General evidence of possible
violations of federal criminal law by an employee
of their department or agency.

These procedures govern the reporting of possible federal
crimes committed by officers or employees of the intelligence
agencies. They are promulgated under the authority of 28
U.S.C. § 535 and E.O. 12036, §§ 1-706, 3-305. Except to
the extent indicated in paragraph G, infra, they supersede
all previous agreements or guidelines.

A. Definitions

1. "Officer or employee" shall mean:

a. All persons defined as employees in

E.O. 12036, § 4-204;

b. former officers or employees when the
offense was committed during their
employment; and

c. former officers or employees when a
basis for referral exists with respect
to violation of 18 U.S.C. § 207.

2. "Agency" shall mean:

- a. The Central Intelligence Agency;
- b. the National Security Agency;
- c. the Defense Intelligence Agency;
- d. offices within the Department of Defense for the collection of specialized foreign intelligence through reconnaissance programs;
- e. the intelligence elements of the military services, including the Army Intelligence and Security Command (INSCOM), the Counter-Intelligence Directorate of the Air Force Office of Special Investigations, and the Internal Security Division of the Naval Investigative Service;
- f. the Bureau of Intelligence and Research of the Department of State;
- g. the Intelligence elements of the Federal Bureau of Investigation; and
- h. the staff elements of the Office of the Director of Central Intelligence.

3. "Basis for referral" shall mean allegations, complaints, or information tending to show that any officer or employee may have violated a federal criminal statute that the agency cannot establish as unfounded within a reasonable time through a preliminary inquiry.

B. Determining Basis for Referral

1. When an agency has received allegations, complaints, or information tending to show that any officer or employee may have violated a Federal criminal statute, it shall determine whether a basis for referral exists.

2. In determining a basis for referral, an agency will not attempt to establish that all elements of the possible violation have occurred or that a particular employee is responsible before referring the matter to the Department of Justice.

3. When the allegations, complaints, or information received are not sufficient to determine whether a basis for referral exists, an agency shall conduct a preliminary inquiry, limited to the following methods:

- a. Interviews with current employees;
- b. Examination of the records of the agency;
- c. Examination of the records of other agencies;
- d. Examination of premises occupied by the agency, not constituting a physical search, physical surveillance, or electronic surveillance; or

e. Under procedures approved by the Attorney General and in conformity with other legal requirements, physical search, electronic surveillance, or physical surveillance of officers and employees of the agency on premises occupied by the agency.

A preliminary inquiry shall not include interviews of persons who are not current employees of the agency, examination of premises not occupied by the agency, except that the agency may interview a non-employee for the sole purpose of determining the truth of a report that such non-employee has made an allegation or complaint against an agency employee.

C. Referral to the Department of Justice

Referrals shall be made in the following manner:

1. (a) In cases where no public disclosure of classified information or intelligence sources and methods would result from further investigation or prosecution, and the security of ongoing intelligence operations would not be jeopardized thereby, the agency will report the matter to the cognizant office of the Federal Bureau of Investigation, other appropriate Federal investigative agency, or to the appropriate United States Attorney or his designee for an investigative or prosecutive determination. Cases involving bribery or conflict of interest will be reported to the Criminal Division.

(b) A record of such referrals and any subsequent

agency action to dispose of the matter shall be maintained by the agency, and on a quarterly basis, a summary memorandum indicating the type of crime, place and date of referral and ultimate disposition will be forwarded to the Assistant Attorney General, Criminal Division, or his designee. Referrals made by covert facilities to the United States Attorneys, the FBI or other Federal investigative agencies will also be included in the quarterly report with due regard for protection of the security of said installations.

2. In cases where preliminary investigation has failed to develop an identifiable suspect and the agency believes that investigation or prosecution would result in public disclosure of classified information or intelligence sources or methods or would jeopardize the security of ongoing intelligence operations, the Criminal Division will be so informed in writing, following which a determination will be made as to the proper course of action to be pursued in consultation with the agency and the FBI.

3. (a) In cases where preliminary investigation has determined that there is a basis for referral of a matter involving an identifiable agency officer or employee to the Department of Justice, the future investigation or prosecution of which would result in the public disclosure of classified information or intelligence sources or methods or would jeopardize the security of

ongoing intelligence operations, a letter explaining the facts of the matter in detail will be forwarded to the Criminal Division. The agency will also forward to the Criminal Division a separate classified memorandum explaining the security or operational problems which would arise from a criminal investigation or prosecution, including, but not limited to:

- (1) Public disclosure of information needed to prove the offense or to obtain a search warrant or an electronic surveillance order under chapter 119 of Title 18, United States Code;
- (2) Disclosure required by a defense request for discovery of information under Rule 16 of the Federal Rules of Criminal Procedure, 18 U.S.C. § 3500, or Brady v. Maryland, 373 U.S. 83 (1963); and
- (3) Interference with the voluntary provision of cover or other services necessary for intelligence operations by persons other than employees.

(b) In reporting such matter, the agency shall inform the Criminal Division of the steps it has taken to prevent a recurrence of similar offenses, if such action is feasible, as well as those administrative

sanctions which may be contemplated with respect to the prospective criminal defendant.

(c) The Criminal Division, after any necessary consultation with the agency and the FBI, will make a prosecutive determination, informing the agency in writing of such determination.

4. Officers or employees who are the subject of such referrals to any component of the Department of Justice may be identified as John Doe # _____ in any written document associated with the initial referral. The true identities of such persons will be made available when the Department determines that they are essential to any subsequent investigation or prosecution of the matter referred.

D. Further Action by Agencies

If, as a result of the preliminary inquiry, the agency desires to conduct a more extensive investigation for administrative or security reasons, it will inform the Department of Justice component to which the matter is referred. The agency may take appropriate administrative, disciplinary, or other adverse action at any time against any officer or employee whose activities are reported under these procedures. However, internal agency investigations and disciplinary action in referred matters will be coordinated with the appropriate investigative or prosecuting officials to avoid prejudice to any criminal investigation or prosecution.

E. Format of Referrals

All referrals required by these procedures shall be in writing and in such detail as the Department of Justice component receiving the referral shall determine.

F. Direct Reports to the Attorney General

When the head of an agency within the intelligence community believes that circumstances of security warrant it, he may directly report to the Attorney General in writing any matter required to be referred by these procedures, in lieu of following the reporting procedures of paragraphs C-E, *supra*.

G. Relation to Other Procedures and Agreements

1. Notwithstanding the November 25, 1955 Memorandum of Understanding between the Department of Defense and the Department of Justice, notice of crimes committed by an officer or employee which violate both federal criminal statutes and the Uniform Code of Military Justice shall be given to the Department of Justice as provided herein. Thereafter, the investigation and prosecution of individuals subject to the Uniform Code of Military Justice shall be conducted as provided by the 1955 Memorandum of Understanding.

2. These procedures do not affect the reporting of possible offenses by regular, permanent FBI employees to the Office of Professional Responsibility, Department of Justice.

3. Nothing in these procedures shall be construed to restrict the exchange of information between agencies in the intelligence community required by other procedures or agreements made under E.O. 12036.

Dated: 8/5/79

Griffin B. Bell
Griffin B. Bell
Attorney General



Office of the Attorney General
Washington, D. C. 20530

PROCEDURES FOR REPORTING FEDERAL CRIMES
BY NON-EMPLOYEES UNDER E.O. 12036 § 1-706

Section 1-706 of Executive Order 12036 requires senior officials of the intelligence community to:

Report to the Attorney General evidence of possible violations of federal criminal law by an employee of their department or agency, and report to the Attorney General evidence of possible violations by other persons of those federal criminal laws specified in guidelines adopted by the Attorney General.

These guidelines specify the violations of federal criminal statutes by non-employees which must be reported and provide reporting procedures.

A. Definitions

1. "Agency" shall mean:

- a. The Central Intelligence Agency;
- b. the National Security Agency;
- c. the Defense Intelligence Agency;
- d. offices within DoD for the Collection of specialized national foreign intelligence through reconnaissance programs;

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- e. the intelligence elements of the military services, including the Army Intelligence and Security Command (INSCOM), the Counterintelligence Directorate of the Air Force, Office of Special Investigations, and the Internal Security Division of the Naval Investigative Service;
 - f. the Bureau of Intelligence and Research of the Department of State;
 - g. the Intelligence elements of the Federal Bureau of Investigation; and
 - h. the staff elements of the Office of the Director of Central Intelligence.
2. "Employee" shall mean an employee as defined in E.O. 12036, § 4-204.
 3. "Reportable offense" shall mean a possible violation of the federal criminal statutes listed in part C of these procedures.
 4. "Subject" shall mean a person, other than an employee of the agency, about whom an agency has, in the course of performing its lawful functions, acquired information that he is committing or has committed a reportable offense.

B. Policy and Interpretation

1. These procedures govern the reporting of information of which the agency or its employees become aware in the course of performing their lawful functions. They do not authorize an agency to conduct any investigation or to collect any information not otherwise authorized by law.

2. These procedures require an employee of an agency in the intelligence community to report to the general counsel of his department or agency facts or circumstances that appear to the employee to indicate that a criminal offense has been committed. Reports to the Department of Justice will be made by the general counsel of the department or agency or his delegate only as set forth below.

C. Reportable Offenses

Information or allegations showing that the following federal offenses may have been committed shall be reported:

1. Crimes involving intentional infliction or threat of death or serious physical harm. Pertinent federal offenses include:

Assault -- 18 U.S.C. §§ 111-113(a)

Homicide -- 18 U.S.C. §§ 1111-14, 1116, 2113(e)

Kidnapping -- 18 U.S.C. § 1201

Congressional assassination, assault or kidnapping -- 18 U.S.C. § 1751

Threatening the President -- 18 U.S.C. § 871

2. Crimes that impact on the national security, defense or foreign relations of the United States. Pertinent federal offenses include:

Communicating classified information -- 50 U.S.C. § 783

Espionage -- 18 U.S.C. §§ 793-98

Sabotage -- 18 U.S.C. §§ 2151-57

Arms Export Control Act -- 22 U.S.C. § 2778

Export Control Act -- 50 U.S.C. § 2405

Neutrality offenses -- 18 U.S.C. §§ 956-60

Trading with the Enemy Act -- 50 App. U.S.C.
§§ 5 (b), 16

Acting as an unregistered foreign agent -- 18 U.S.C.
§ 951

Communicating classified information -- 50 U.S.C.
§ 783(b)

Government employee acting for a foreign principal --
18 U.S.C. § 219

Communicating restricted data -- 42 U.S.C.
§ 2274-77

Espionage -- 18 U.S.C. §§ 793-98

Failure to register as foreign espionage
trainee -- 50 U.S.C. §§ 851-55

Foreign Agents Registration Act -- 22 U.S.C.
§ 618(a)

Sabotage -- 18 U.S.C. §§ 2151-57

Unlawfully entering the United States -- 8 U.S.C.
§ 1325

The general counsel of the agency, by agreement with the Criminal Division, may develop categories of specific crimes which need not be reported because that particular category could have no significant impact on national security, defense or foreign relations.

3. Any crime meeting any of the following criteria:

a. The crime is committed in circumstances likely to have a substantial impact on the national

security or foreign relations of the United States or is intended to conceal activities having such an impact.

b. The crime involves foreign interference with the integrity of United States governmental institutions or processes. Such crimes include, when committed by foreign persons:

Bribery of public officials and witnesses -- 18 U.S.C. §§ 201-208

Conspiracy to injure or impede an officer -- 18 U.S.C. § 372

Election contributions and expenditures -- 2 U.S.C. §§ 441a-j, 599-600

c. There are indications that the crime is committed by or on behalf of a foreign power or in connection with international terrorist activity. Such crimes include:

Aircraft piracy -- 49 U.S.C. § 1472(i)

Distribution, possession, and use of explosives -- 18 U.S.C. §§ 842(a)-(i)

Unlawful electronic surveillance -- 18 U.S.C. §§ 2511(1), 2512(1), 50 U.S.C. § 1809

Passport and visa offenses -- 18 U.S.C. §§ 1541-44, 1546

Distribution, possession, transfer, and use of use of firearms -- 18 U.S.C. § 922, 924; 26 U.S.C. § 5861

Transporting explosives on board aircraft -- 49 U.S.C. § 1472(h)

Conspiracy to injure or impede an officer -- 18 U.S.C. § 372

Counterfeiting U.S. obligations -- 18 U.S.C. § 471-74

False statements and false official papers -- 18 U.S.C. §§ 1001-02, 1017-18

Obstruction of justice -- 18 U.S.C. §§ 1503-06,
1508-10

Perjury -- 18 U.S.C. § 1621-23

4. The general counsel may report any other possible offense when he believes it should be reported to the Attorney General.
5. Any conspiracy to commit a reportable offense shall be reported.
6. The general counsel shall keep records of any matters referred to him which contain information or allegations of a felony in violation of federal law which the general counsel determines is not reportable under these provisions.

D. Reporting Procedures

When information or allegations are received by an agency that a subject has committed or is committing a reportable offense, the agency shall transmit the information or allegations to the Department of Justice in the following manner:

1. In a case where no public disclosure of classified information or intelligence sources and methods would result from further investigation or prosecution, and the security of ongoing intelligence investigations would not be jeopardized thereby, the agency will report the matter to the cognizant office of the Federal Bureau of Investigation, other

appropriate Federal investigative agency, or to the appropriate United States Attorney or his designee for an investigative or prosecutive determination.

2. In a case where further investigation or prosecution would result in the public disclosure of classified information or intelligence sources and methods or would jeopardize the conduct of ongoing intelligence operations, a letter explaining the facts of the matter in detail will be forwarded to the Criminal Division. The agency will also forward to the Criminal Division a separate classified memorandum explaining the security or operational problems which would arise from a criminal investigation or prosecution, including, but not limited to:
 - a. Public disclosure of information needed to prove the offense or to obtain a search warrant or an electronic surveillance order under chapter 119 of Title 18, United States Code;
 - b. disclosure required by a defense request for discovery of information under Rule 16 of the Federal Rules of Criminal Procedure, 18 U.S.C. § 3500, or *Brady v. Maryland*, 373 U.S. 83 (1963); and

- c. interference with the voluntary provision by the subject or persons associated with the subject of cover or other services necessary for intelligence operations.

The Criminal Division, after necessary consultation with the agency, will determine whether to further investigate or prosecute. The agency will be informed of such determination in writing.

- E. If the subject of a referral is an employee of another agency other than a person subject to the Uniform Code of Military Justice, the Criminal Division may refer the matter to that agency for preliminary investigation and possible administrative action. The employing agency will report the results of any such preliminary investigation under the procedures for reporting possible crimes by agency employees.
- F. If the subject of the referral is a person subject to the Uniform Code of Military Justice, the Criminal Division will coordinate the handling of the matter with the appropriate military service in accordance with existing agreements between the Departments of Justice and Defense.
- G. All referrals required by these proceedings shall be in writing and in such detail as the Department of Justice component receiving the referral shall determine.
- H. When the head of an agency believes that circumstances of

security warrant it, he may directly report to the Attorney General in writing any matter required to be reported by these procedures in lieu of following the procedures of paragraphs D-G.

- I. Nothing in these procedures shall be construed to restrict the exchange of information among agencies in the intelligence community required by other procedures or agreements made under E.O. 12036.

8/15/79

Dated:

Griffin B. Bell

Griffin B. Bell
Attorney General

PROCEDURES RELATING TO THE PROVISION OF EXPERT CIA PERSONNEL TO LAW ENFORCEMENT AUTHORITIES*

For the purpose of implementing subsection 2-309(c) of Executive Order 12036, the Attorney General has approved the following procedures relating to the provision of Central Intelligence Agency (CIA) expert personnel to law enforcement authorities within the United States for the purposes of actual participation in enforcement activities. These procedures do not apply in circumstances where CIA is asked only to provide specialized equipment or technical knowledge to law enforcement authorities.

PROHIBITIONS

1. CIA will not provide its expert personnel to the Law Enforcement Assistance Administration (LEAA) or its successor agencies.
2. CIA will not provide its expert personnel to other Federal law enforcement authorities for law enforcement activities unless the Attorney General approves such assistance, except as provided in paragraph 5, 11, 12 or 13 below.
3. CIA will not provide its expert personnel to state or local law enforcement agencies within the United States to support law enforcement activities unless lives are endangered and the Attorney General approves such assistance, except as provided in paragraph 11 or 13 below.

PERMITTED ACTIVITIES

4. CIA may provide its expert personnel to any law enforcement authority except the LEAA to support law enforcement activities if there are reasonable grounds to believe that CIA is in a position to provide assistance which is not otherwise available from a non-intelligence agency and if the Attorney General approves such assistance pursuant to paragraph 6 or 7 below.

*Depending on the purpose for which the expert personnel are being provided, other Attorney General approved procedures may also apply. Unless the Attorney General otherwise specifies, the activities of CIA employees while assisting other agencies will be governed by all rules, regulations, and procedures controlling the activities of CIA employees.

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5. CIA may provide expert personnel to federal law enforcement agencies to assist in investigating or preventing clandestine intelligence activities by foreign powers, international terrorist activities, or international narcotics production and trafficking, provided that such assistance is limited to technical and analytical assistance to evaluate or analyze information collected by law enforcement agencies and that CIA personnel do not participate in collection of raw information. Such assistance may be provided without prior approval of the Attorney General if the General Counsel, CIA, has determined that provision of the assistance is consistent with all applicable law, including the provisions of the National Security Act of 1947, as amended. The Attorney General shall be notified, on a timely basis, of all assistance provided under this paragraph. Any request for CIA participation in collecting counterintelligence information in the United States shall be reviewed and approved in accordance with the procedures approved under S 1-805 of Executive Order 12036.

APPROVAL PROCEDURES FOR PERMITTED ACTIVITIES

6. Except as provided in paragraph 8 below, requests for Attorney General approval for CIA provision of its expert personnel to a Federal law enforcement authority (except LEAA or its successor agencies) will be made by the Director of Central Intelligence (DCI) or Deputy Director of Central Intelligence (DDCI) and will:

a. describe the nature of the assistance to be provided, including the duration thereof; and

b. explain the basis for the conclusion that CIA is in a position to provide requested assistance which is not otherwise available from a non-intelligence agency.

7. Except as provided in paragraph 8, immediately below, requests for Attorney General approval for CIA provision of its expert personnel to a state or local law enforcement agency in the United States will be made by the DCI or DDCI and will:

a. describe the nature of the assistance to be provided, including the duration thereof;

b. explain the basis for the conclusion that CIA is in a position to provide requested assistance which is not otherwise available from a non-intelligence agency; and

c. describe the facts and circumstances relating to the threat of human life.

8. The Attorney General may approve generic findings for a particular type of assistance for a particular law enforcement authority, if circumstances require that repeated assistance may be needed. Such approval may authorize CIA to provide similar assistance so long as it continues to meet the requirements of paragraph 6 and 7 above, and meets any specific additional requirements set out in the Attorney General procedures.

9. When necessary a request may be oral and authorization may also be oral but in these circumstances the request and authorization will be confirmed in writing as soon as possible.

10. All recommendations to the DCI or DDCI requesting Attorney General approval will be forwarded through the General Counsel, CIA, along with supporting information, for his determination that the recommendation conforms to the requirements of these procedures and is otherwise lawful. The General Counsel's determination shall be sent to the Attorney General as part of any request for Attorney General approval.

EXCEPTIONS

11. Nothing in these procedures will be construed to prohibit, where a person's life or physical safety is reasonably believed to be in imminent danger, and the time required to secure the prior approval of the Attorney General would increase the risk of such danger, the assistance by CIA's expert personnel without such prior approval. The Attorney General shall be notified within 72 hours of any such assistance provided to a law enforcement authority in such exigent circumstances.

12. Nothing in these procedures will be construed to prohibit CIA's providing its expert personnel to support the Secret Service in accordance with the provisions of Public Law 94-524 (18 U.S.C. 3056 note).

13. Nothing in these procedures precludes exceptions by specific written Presidential authorization to the extent the President has lawful authority to approve such exceptions. Any application for such exception will be forwarded by the DCI or DDCI to the President through the Attorney General.

INTERPRETATION

14. All questions as to the coverage and interpretation of these procedures will be resolved by the General Counsel, CIA, in consultation where there is a significant new legal question with the Department of Justice. The DCI may modify these procedures upon the express approval of the Attorney General.

DEFINITIONS

15. For the purposes of these procedures the term:

a. "Attorney General" includes the Acting Attorney General or any person specifically designated by the Attorney General to approve requests for assistance.

b. "Central Intelligence Agency" and "CIA" include the staff elements of the office of the Director of Central Intelligence.

c. "CIA employee" means any person employed by, assigned to or acting for CIA.

d. "CIA expert personnel" and "its expert personnel" mean any CIA employee who has unique or special technical or professional skill or expertise.

e. "Clandestine intelligence activity" means an activity conducted for intelligence purposes or for the purpose of affecting political or governmental processes by or on behalf of a foreign power in a manner tending to conceal from the United States Government the nature or fact of such activity or the role of such foreign power, and any knowing activity conducted in support of such activity.

f. "Deputy Director of Central Intelligence" and "DDCI" include the Acting Deputy Director of Central Intelligence.

g. "Director of Central Intelligence" and "DCI" include the Acting Director of Central Intelligence.

h. "Federal law enforcement authorities" includes the FBI, DEA, Secret Service and other entities of United States departments and agencies whose officers are empowered by law to conduct investigations of, and to make arrests because of, offenses against the United States.

i. "Foreign power" means

(1) a foreign government or any component thereof, whether or not recognized by the United States;

(2) a faction of a foreign nation or nations, not substantially composed of United States persons;

(3) an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;

(4) a foreign-based group engaged in international terrorist activity and any other group engaged abroad in such activity; or

(5) a foreign-based political organization not substantially composed of United States persons.

j. "International terrorist activities" means any activity or activities which:

(1) Involves killing, causing serious bodily harm, kidnapping, or violent destruction of property, or an attempt or credible threat to commit such acts;

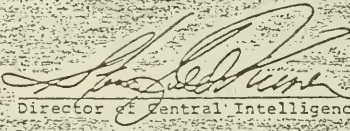
(2) Appears intended to endanger a protectee of the Secret Service or the Department of State or to further political, social or economic goals by intimidating or coercing a civilian population or any segment thereof, influencing the policy of a government or international organization by intimidation or coercion, or obtaining widespread publicity for a group or its cause; and

(3) Transcends national boundaries in terms of the means by which it is accomplished, the civilian population, government, or international organization it appears intended to coerce or intimidate, or the locale in which its perpetrators operate or seek asylum.

k. "United States," when used to describe a place, includes territories of the United States.

18 July 1979

Date


Director of Central Intelligence

PROCEDURES RELATING TO COVERT PROCUREMENT

For the purposes of implementing Section 2-303 of Executive Order 12036, the Director of Central Intelligence (DCI) has established and the Attorney General has approved the following procedures relating to the procurement by the Central Intelligence Agency (CIA) and the Office of the DCI of goods and services from private companies or institutions in the United States without disclosure of CIA sponsorship to appropriate officials of the company or institution. (Such procurement is referred to in these procedures as "covert procurement.")

PROHIBITIONS

1. CIA will not contract or otherwise arrange for the provision of goods or services with an academic institution in the United States unless CIA sponsorship is known to the appropriate officials of the academic institution. This restriction and these procedures do not apply to the registration or attendance at an academic institution by a CIA employee, who is not publicly acknowledged as such. That subject is governed by the Attorney General-approved procedures relating to undisclosed participation in domestic organizations.

2. CIA will not contract or otherwise arrange for the provision of goods or services with a private company or institution in the United States unless:

a. CIA sponsorship is revealed to appropriate officials of the company or organization; or

b. Concealment of CIA's sponsorship is determined by the DCI or Deputy Director of Central Intelligence (DDCI) to be necessary to maintain essential cover (including cover used to protect the fact or extent of CIA interest or expertise in particular technologies or foreign intelligence matters) or proprietary arrangements for authorized intelligence purposes.

That prohibition does not, however, require a disclosure that a procurement is for CIA if the transaction is such that an individual making the same procurement in a private capacity would not be expected to disclose a principal for whom such individual was acting.

APPROVED FOR RELEASE

Date 8 JUL 1980

3. CIA will not request or otherwise encourage, directly or indirectly, any person, organization or government agency to undertake any activity forbidden under these procedures.

PERMITTED ACTIVITIES

4. Covert procurement is lawful and permissible if it is determined by the DCI or DDCI to be necessary to maintain the cover of proprietary arrangements of CIA employees, activities, programs or facilities which are not publicly acknowledged as such by the United States Government.

5. In determining whether covert procurement is necessary, the DCI or DDCI will take into account the following considerations:

a. The importance of the procurement activity.

b. whether the purpose could be served if CIA sponsorship were disclosed;

c. whether the cover of CIA employees, activities, programs or facilities would be compromised or jeopardized if CIA sponsorship were disclosed;

d. whether CIA's level of interest or expertise in a particular field would be revealed if CIA sponsorship were disclosed, but only to the extent that these are valid reasons for concealing such information;

e. whether CIA's interest in and capabilities concerning specific foreign intelligence or counter-intelligence objectives would be jeopardized or disclosed; and

f. whether, if CIA undertook a covert procurement and CIA's sponsorship were subsequently disclosed, the party with which CIA undertook the procurement would suffer any adverse consequences including embarrassment and whether such consequences outweigh the importance of the procurement.

Activities associated with CIA's reimbursement of expenses incurred by its employees in undercover activities is solely governed by the Attorney General-approved procedures governing undisclosed participation in domestic organizations to the extent such activities relate to domestic organizations.

"Cover" includes cover used to protect the fact or extent of CIA interest or expertise in particular technologies or foreign intelligence subject matters.

APPROVAL PROCEDURES FOR PERMITTED ACTIVITIES

6. Recommendations to the DCI or DDCI for his approval of covert procurement need not be made on an individual case-by-case basis. Such recommendations may cover classes or categories of cases. Each such recommendation will contain a statement of the facts and circumstances relied upon to support a determination by the DCI or DDCI that the covert procurement is necessary for one or more of the authorized intelligence purposes noted in paragraph 4 above, in light of the considerations noted in paragraph 5 above. The DCI or DDCI may delegate to subordinates the authority for approval of specific individual procurements within the scope of the classes or categories.

7. All recommendations to the DCI or DDCI for his determination that a covert procurement or any class or category of covert procurement is necessary for authorized intelligence purposes shall be forwarded through the General Counsel, CIA.

EXCEPTIONS AND GENERAL MATTERS

8. Where necessary due to press of time, a recommendation to the DCI or the DDCI may be oral, and authorization may also be oral, but in these circumstances both the recommendation and the authorization will otherwise be in conformance with these procedures and will be confirmed as promptly as possible in writing.

9. Nothing in these procedures shall prohibit the retention and dissemination of information necessary for the purpose of determining or assuring that the requirements of these procedures are satisfied.

10. Nothing in these procedures shall prohibit CIA from participating with any other Federal department or agency in joint procurement. If the item being purchased is a stock item of the supplier being purchased for routine use of government agencies including CIA, there is no necessity for disclosing CIA's involvement. In all other cases CIA's participation in joint procurement shall be disclosed unless nondisclosure is approved in accordance with these procedures.

11. Nothing in these procedures shall prohibit CIA from procuring goods or services for other government departments or agencies or other individuals without disclosing the interest of such department, agency or individual as long as the disclosure of that interest is not required by law or procedures of that department or agency.

12. Nothing in these procedures shall preclude a component of CIA from contracting or otherwise arranging, in its own name, for the provision of goods or services as long as there has been official acknowledgment that such component is a part of CIA.

13. Nothing in these procedures shall preclude CIA from and CIA is hereby authorized to contact potential contractors to obtain information relating to possible procurement of goods or services without disclosing that CIA is the agency interested in the information.

14. No contract shall be void or voidable for failure to comply with these procedures.

INTERPRETATION

15. All questions as to the coverage and interpretation of these procedures will be resolved by the General Counsel, in consultation where there is a significant new legal question with the Department of Justice. The DCI may modify these procedures upon the express approval of the Attorney General.

DEFINITIONS

16. For the purposes of these procedures the term:

a. "Academic institution" means any United States college, university or other institution of higher learning that conducts classes for credit and confers degrees.

b. "Appropriate officials of the academic institution" means any official of the institution reasonably believed to be authorized to act on the institution's behalf in relation to the activity in question.

c. "Appropriate officials of the company or organization" means any official of the company or organization reasonably believed to be authorized to act on behalf of the company or organization in relation to the activity in question.

d. "Proprietary" means a sole proprietorship, partnership, corporation, other business entity, or a closely related group of such entities controlled by a single holding company, which are created, owned or legally controlled by CIA, in furtherance of its assigned activities, but created, owned or legally controlled in such a way as to disguise any relationship between the entity and the U.S. Government.

e. "Employee" means a person employed by, assigned to, or acting for the CIA or the Office of the DCI.

f. "Foreign intelligence" means information relating to the capabilities, intentions and activities of foreign powers, organizations or persons, but not including counterintelligence except for information on international terrorist activities.

g. "Counterintelligence" means information gathered and activities conducted to protect against espionage and other clandestine intelligence activities, sabotage, international terrorist activities or assassinations conducted for or on behalf of foreign powers, organizations or persons, but not including personnel, physical, document or communications security programs.

h. "United States," when used to describe a place, includes the territories of the United States.

1. "Director of Central Intelligence" and "DCI" include the Acting Director of Central Intelligence.

3. "Deputy Director of Central Intelligence" and "DDCI" include the Acting Deputy Director of Central Intelligence.

EFFECTIVE DATE

17. These procedures shall become effective 30 days from the date they are approved by the Attorney General.

13 April 1979

Date

Director of Central Intelligence

I approve the foregoing procedures in accordance with subsection 2-303 of Executive Order 12036. In my opinion covert procurement by CIA conducted pursuant to and in accordance with these procedures is lawful. Based on the authorities of the Constitution, the statutes of the United States, and Executive Order 12036, it is my opinion that these procedures form the exclusive authority by which CIA may enter into a contract or arrangement for the provision of goods or services with private companies or institutions within the United States without disclosing CIA sponsorship.

24 777

Date

Attorney General



DEPARTMENT OF DEFENSE

PROCEDURES GOVERNING THE ACTIVITIES OF DOD INTELLIGENCE COMPONENTS THAT AFFECT UNITED STATES PERSONS

NOVEMBER 1979

UNDER SECRETARY OF DEFENSE FOR POLICY



THE DEPUTY SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

November 30, 1979

FOREWORD

This DoD regulation sets forth procedures governing the activities of DoD intelligence components that affect United States persons. It is issued to implement DoD Directive 5240.1. It is applicable to all intelligence components of the Department of Defense.

Executive Order 12036, "United States Intelligence Activities," stipulates that certain activities of intelligence components that affect U.S. persons be governed by procedures issued by the agency head and approved by the Attorney General. Procedures 1 through 16 satisfy this requirement. Procedures 17 through 21, while not requiring approval by the Attorney General, are issued as further guidance to DoD Components in implementing Executive Order 12036.

Heads of DoD Components may issue supplementary guidance necessary to provide for the internal administration of these procedures within their respective components; such supplementary guidance must be consistent with the procedures set forth herein.

This regulation is effective immediately.

W. Graham Claytor, Jr.

W. Graham Claytor, Jr.

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REFERENCES

- (a) Agreement Between the Department of Defense and the Federal Bureau of Investigation, April 5, 1979
- (b) DOD Directive 5105.42, "Defense Investigative Service (DIS)," July 19, 1978
- (c) DOD Directive 5100.23, "Administrative Arrangements for the National Security Agency," May 17, 1967
- (d) DOD Directive 5030.34, "Agreement Between the United States Secret Service and the Department of Defense Concerning Protection of the President and Other Officials," July 11, 1977
- (e) Executive Order 11905, "United States Foreign Intelligence Activities," February 18, 1976
- (f) Executive Order 12036, "United States Intelligence Activities," January 24, 1978
- (g) Uniform Code of Military Justice, 10 U.S.C. §§ 801-940 (1976)
- (h) Foreign Intelligence Surveillance Act of 1978, Pub. L. No. 95-511
- (i) Immigration and Nationality Act
- (j) Manual For Courts Martial
- (k) DOD Directive 5030.49, "Customs Inspection," September 23, 1971
- (l) DOD Directive 5200.27, "Acquisition of Information Concerning Persons and Organizations Not Affiliated with the Department of Defense," September 8, 1975
- (m) DOD Directive 1000.17, "Department of Defense Personnel Assigned to Duty Outside the Department and Supporting Non-DOD Activities," May 31, 1977
- (n) Posse Comitatus Act, 10 U.S.C.A. § 6103 (1976)
- (o) DOD Directive 5100.82, "Inspector General for Defense Intelligence," June 30, 1976
- (p) Controlled Substances Act of 1970, Pub. L. No. 91-613, Title II, 84 Stat. 1242

PROCEDURE 1. COLLECTION OF
INFORMATION ABOUT UNITED STATES PERSONS

Sec. 1. Applicability and Scope

This procedure governs the means that may be used and the kind of information about United States persons that may be collected without their consent. These limitations apply regardless of the means used to collect the information and they apply to the collection efforts of all DoD intelligence components. These limitations do not apply when the information is--

- . available publicly;
- . collected with the consent of the person whom the information concerns;
- . about persons or organizations that do not qualify as United States persons; or
- . collected for law enforcement purposes.

Sec. 2. Definitions

The definitions of the following terms, set out in Appendix A, are applicable to this procedure:

- . agent of a foreign power
- . available publicly
- . clandestine intelligence activity
- . commercial organization
- . consent
- . contact
- . contractor
- . corporation
- . counterintelligence
- . counterintelligence investigation
- . DoD intelligence component
- . employee
- . foreign intelligence
- . foreign power
- . intelligence community
- . intelligence method
- . intelligence source

- . international terrorist activities
- . law enforcement
- . law enforcement authorities
- . lawful investigation
- . narcotics production or trafficking
- . personnel security
- . personnel security investigation
- . physical security
- . physical security investigation
- . reasonable belief
- . United States
- . United States person

Collection. Information is not "collected" by human intelligence operations until it is communicated by an employee to an entity of the intelligence community by filing of report or other means. DoD intelligence components operate offices that conduct liaison with foreign governments on behalf of United States government agencies. When passing information between such agencies and foreign governments, these offices will be considered to have "collected" the information (for which they are a conduit) only if an office stores the information or disseminates the information within the intelligence component that operates the office.

Where consent to a particular collection activity is implied on the basis of adequate notice that a particular action (such as entering a restricted area) presumes consent to an accompanying action (such as search of briefcases), the adequacy of notice implying consent should be determined by the General Counsel of the intelligence component. Significant questions as to adequacy of notice in particular cases shall be referred to the DoD General Counsel, who will consult with the Attorney General where significant new legal issues are involved,

Cooperating sources in this context means persons or organizations that volunteer information to DoD intelligence components, or provide information at the request of such components. These include government agencies, law enforcement authorities, credit agencies, academic institutions, employees, foreign governments, and others who provide information on a voluntary basis. Inquiries made of cooperating sources must include identification of the Department of Defense or a component thereof.

Sec. 3. Policy

The Department of Defense collects information about United States persons for foreign intelligence and counterintelligence purposes only when necessary to the conduct of intelligence functions assigned to the Department. The collection of information is limited carefully to avoid, where feasible, information not necessary to the conduct of these functions. Collection is accomplished by the least intrusive means that will provide foreign intelligence or counterintelligence of the quality, scope and timeliness required.

Sec. 4. Procedures

A. General criteria for collection. Information about a United States person may be collected only:

1. From sources that provide information that is available publicly;
2. From cooperating sources;

3. From collection activities undertaken with the consent of a United States person authorized to grant such consent; or
4. From intelligence collection techniques conducted in compliance with the procedures set out in this Regulation.

B. Foreign intelligence. Information may be collected about a United States person under the restrictions set forth in this section if the information qualifies as foreign intelligence or, as regards potential sources or potential contacts, supports collection of foreign intelligence. The means of collection must meet the criteria set out in Section 4.A. Intentional collection must be limited to collection of information about United States persons in one of the following categories:

1. The information is about--
 - a. a person who is reasonably believed to be an officer or employee of a foreign power; or
 - b. an entity that is owned or controlled, directly or indirectly, by a foreign power; or
 - c. a person who is reasonably believed to be acting on behalf of a foreign power.
2. The information is about a person who is reasonably believed to be a potential source of foreign intelligence or a potential contact who will lead to a potential source of foreign intelligence. The information that may be collected about a United States person who is reasonably believed to be a potential source or contact is limited to that necessary for the purpose of determining the suitability or credibility of such persons.

A potential source is a person who is situated by knowledge, training, position or responsibility so as to have access to or be able to obtain or develop foreign intelligence. A potential contact is a person who is situated by acquaintance, friendship, affiliation, position or other factor so as to be able to have contact with a potential source.

3. The information is about a person who is reasonably believed to be engaged in international terrorist activities.

A person is "engaged in" an activity if that person has taken some action in furtherance of the activity or that person is in contact with a person or organization that has taken such action under circumstances that support a reasonable belief that action by the person in furtherance of the activity will follow.

4. The information is about a corporation or commercial organization.

An organization that uses the words "Inc.", "Corp.", "Co.", "Ltd.", or other common commercial designations in its name may be treated as a corporation or commercial organization for this purpose.

5. The information is about a United States person who is reasonably believed to be a captured prisoner of war or who is missing in action.

C. Counterintelligence. Information may be collected about a United States person for counterintelligence purposes under the restrictions set forth in this section. The means of collection must meet the criteria set out in Section 4.A. Intentional collection must be limited to collection of information about United States persons in one of the following categories:

1. The information is about a United States person whom facts and circumstances indicate is or may be engaged in clandestine intelligence activities on behalf of a foreign power or international terrorism and that person is--
 - a. a person who is reasonably believed to be an officer or employee of a foreign power;
 - b. an entity that is owned or controlled, directly or indirectly, by a foreign power;
 - c. a person who is in contact with a foreign power or an agent of a foreign power; or
 - d. a commercial organization.
2. The information is needed to identify a person who is in contact with someone who is the subject of a lawful counterintelligence investigation. The information that may be collected about the United States person who is in contact with the subject of the counterintelligence investigation is limited to information necessary to identify that person, including name, address, employment, and security clearance.

A person is the "subject of" a counterintelligence investigation when the investigation has focussed on that person's activities.
3. The information is about a person who is reasonably believed to be a potential source of counterintelligence or a potential contact who will lead to a potential source of counterintelligence. Information collected about a United States person who is reasonably believed to be a potential source or a potential contact shall be limited to that necessary for the purpose of determining the suitability or credibility of such persons.

A potential source is a person who is situated by knowledge, training, experience, position, or responsibility so as to have access to or be able to obtain or develop counterintelligence. A potential contact is a person who is situated by acquaintance, friendship, affiliation, position or other factor to be able to have contact with a potential source,

D. Intelligence sources and methods. Information may be collected about a United States person if it is necessary to protect an intelligence source or method from unauthorized disclosure. The means of collection must meet the criteria in Section 4.A. Intentional collection must be limited to collection of information about United States persons in one of the following categories:

1. Information about persons who are--

- a. present employees of a DoD intelligence component;
- b. former employees of a DoD intelligence component;

The term "former employee" includes employees of predecessor components of DoD intelligence components.

- c. applicants for employment with a DoD intelligence component;

The term "applicant" in this context means a person who has made a request that he or she be considered for employment. This includes applicants for transfer to a DoD intelligence component.

- d. present contractors of a DoD intelligence component;
- e. present or former employees of a present contractor of a DoD intelligence component;

- f. former contractors of a DoD intelligence component; or
 - g. present or former employees of a former contractor of a DoD intelligence component.
2. Information that is needed to identify a person in contact with a person covered by subsection 1 above.

The information that may be collected about the United States person under this subsection is limited to information necessary to identify that person including name, address, employment, and security clearance.

E. Physical security. Information may be collected about a United States person for the purpose of protecting the physical security of DoD components and contractors that serve such components if such protection is within the assigned mission of the collecting agency. This information must be collected in the course of a lawful physical security investigation. The means of collection must meet the criteria set out in section 4.A. Intentional collection must be limited as follows:

- 1. Information may be collected about persons who are--
 - a. discovered on a defense or intelligence installation without authorization;
 - b. discovered in a portion of a defense or intelligence installation under circumstances such that there is a reasonable belief that such person is violating or is about to violate laws or regulations relating to the protection of classified information;
 - c. reasonably believed to be engaging in activities that are directed at or will

result in unauthorized entry onto, or damage to an installation; or

- d. reasonably believed to jeopardize an intelligence operation because of physical proximity to the operation.

Information collection within the United States under subsections (c) and (d) with respect to a person who is not on a DoD installation should be collected only in conformity with the agreement between the Department of Defense and the Federal Bureau of Investigation dated April 5, 1979, ref. (a).

- 2. Information may be collected that describes the person's--
 - a. identification,
 - b. location, or
 - c. activities, intentions and capabilities that pose a clear threat to the physical security of the intelligence component.

F. Personnel security. Information may be collected about a United States person for personal security purposes. The information must be collected in the course of a lawful personnel security investigation.

- 1. Within the United States, the Defense Investigative Service conducts personnel security investigations for DoD intelligence components in accordance with DoD Directive 5105.42, ref. (b), and the National Security Agency conducts certain personnel security investigations under DoD Directive 5100.23, ref. (c). DoD intelligence components are authorized to collect personnel security information from cooperating sources as needed for determination as to whether a personnel security investigation is warranted.
- 2. Outside the United States, information may be collected by a DoD intelligence component only with respect to applicants for employment, present employees, present

contractors, and present applicants for employment with or employees of contractors of that component or persons granted access to classified information collected or produced by that component.

3. Outside the United States, information may be collected by DoD intelligence components for the Defense Investigative Service, other DoD components that are authorized to conduct personnel security investigations, the Department of State, and the Federal Bureau of Investigation.
4. As a protective service, information may be collected about a United States person who is reasonably believed to be endangering the safety of a Department of Defense official or foreign official if the DoD intelligence component has been assigned responsibility by the Secretary of Defense for protection of that person.

G. Narcotics. Information may be collected about a United States person who is reasonably believed to be engaged in narcotics production or trafficking. "Narcotics production or trafficking" is a defined term and should be construed strictly. A person is "engaged in" an activity if that person has taken some action in furtherance of the activity or that person is in contact with a person or organization that has taken such action under circumstances that support a reasonable belief that action in furtherance of the activity will follow. Information collected should be limited to the person's identification; location; and activities, intentions, capabilities and associates with respect to narcotics production or trafficking.

H. Secret Service. Information may be collected about a United States person who is reasonably believed to be endangering the safety of a person protected by the United States Secret Service. Persons protected by the Secret Service include the President and his immediate family, the President-elect, former Presidents, the Vice President, the Vice President-elect, and visiting heads of state. The collection of such information should be in compliance with the Agreement between the Department of Defense and the Secret Service, as prescribed in DoD Directive 5030.34, ref. (d).

I. Department of State. Information may be collected about a United States person for the Department of State. Collection efforts must be reasonably designed to limit collection of information about a United States person to one of the following categories:

1. Information about a person who is reasonably believed to be endangering the safety of a person protected by the Department of State. Persons protected by the Department of State include heads of foreign states, official representatives of foreign governments, distinguished foreign visitors, the Secretary and Deputy Secretary of State and official representatives of the United States and their immediate families.
2. Information about a person who is abroad if the collection is in response to a request from the Department of State for support of its consular responsibilities relating to the welfare of such persons. A consular officer must submit a written request to the DoD intelligence component. The request must state that the person is

abroad and describe the information required in support of the Department of State's consular responsibilities. Information collected by DoD intelligence components should be limited to that described in the request.

J. Overhead reconnaissance. Information may be collected from overhead reconnaissance not directed at specific United States persons.

Date of Attorney General approval:

8/15/79 GBR

Date of Secretary of Defense approval:

W. Graham Clayton Jr.

30 NOV 1979

PROCEDURE 2. STORAGE OF INFORMATION
ABOUT UNITED STATES PERSONS

Sec. 1. Applicability and Scope

This procedure governs the kind of information about United States persons that may knowingly be stored by a DoD intelligence component without the consent of the person that the information concerns. These limitations apply regardless of the means used to store the information and they apply to the information storage and retrieval systems of all DoD intelligence components. These limitations do not apply when the information to be stored is:

- . collected with the consent of the person whom the information concerns;
- . available publicly
- . stored solely for administrative purposes not related to intelligence or security;
- . required by law to be maintained;
- . about persons or organizations that are not United States persons;
- . stored for law enforcement purposes; or
- . not immediately identified with a United States person because the identity of the United States person is deleted and a generic term or symbol is substituted so that information cannot be connected with an identifiable United States person. When the name of a United States person is included in a brand name, the name of a military or political doctrine or other descriptive figures of speech that do not disclose information about the United States person, the information may be treated in the same manner as if a generic term or symbol were used.

Sec. 2. Definitions

The definitions of the following terms, set out in Appendix A , are applicable to this procedure:

- . administrative purposes
- . available publicly
- . consent
- . counterintelligence
- . DoD intelligence components
- . foreign intelligence
- . intelligence
- . law enforcement
- . physical security
- . United States person

Sec. 3. Policy

The Department of Defense stores information about United States persons for foreign intelligence and counterintelligence purposes only when necessary to the conduct of authorized intelligence functions of Department of Defense components or other government agencies. Storage of information for law enforcement purposes is limited to short-term storage incident to delivery to law enforcement agencies.

Sec. 4. ProceduresA. Storage of Information Collected Under Procedure 1.

Information about United States persons may be stored if it was collected pursuant to Procedure 1.

B. Storage of Information Acquired Incidentally. Information about United States persons may be stored if:

1. Its collection is incidental to authorized collection and such information could have been collected intentionally under this directive; or

2. The information is foreign intelligence or counterintelligence collected from electronic surveillance conducted in compliance with Procedures 4, 5, or 6.
3. Such information is stored for cryptanalytic and traffic analysis purposes.

Unless not practicable, information about United States persons acquired as a part of or incidental to collection activities authorized under this directive, shall be processed prior to storage in the following manner:

If the identification of the United States person(s) involved is necessary to the understanding of such information, it may be retained without alteration.

If the identification of the United States person(s) is not necessary to the understanding of the information contained therein, the information which identifies the United States person(s) involved shall be deleted and replaced with a symbol or generic term which conveys the desired meaning, prior to storage.

C. Storage of Information Relating to Functions of Other DoD Components or Executive Agencies. Information about United States persons that pertains solely to the functions of other DoD components or agencies outside the Department of Defense shall be stored only as necessary to transmit or deliver such information to the appropriate recipients.

D. Temporary Storage. Information about United States persons may be stored temporarily, up to 90 days, solely for the purpose of determining whether that information may be stored under these procedures.

E. Storage of Other Information. Information about

United States persons other than that covered by Sections 4.A. or B. shall be stored only for purposes of reporting such collection for oversight purposes and for any subsequent proceedings that may be necessary.

F. Controls On Access to Stored Information. Storage systems shall be reasonably designed to limit access to information about United States persons to those with a need to know.

G. Duration of Retention. Information about United States persons retained in the files of DoD intelligence components shall be reviewed periodically if practicable to ensure that its continued retention serves the purpose for which it was collected and stored.

H. Information Acquired Prior to Effective Date. Information acquired prior to the effective date of this procedure may be stored by DoD intelligence components without being screened for compliance with this procedure or Procedure 1, if such storage was in compliance with E.O. 11905, ref. (e), E.O. 12036, ref. (f), or other applicable law. Information acquired prior to the effective date of this procedure may be reviewed under Subsection G above if such a review is determined by the head of the component to be practicable and an economic use of resources.

Date of Attorney General approval:

G-23 8/5/79

Date of Secretary of Defense approval:

W. Graham Claytor Jr.

30 NOV 1979

PROCEDURE 3. DISSEMINATION OF INFORMATION
ABOUT UNITED STATES PERSONS

Sec. 1. Applicablility and Scope

This procedure governs the kind of information about United States persons that may be disseminated, without consent, outside the DoD intelligence component that collected and processed the information. These limitations apply regardless of the means used to disseminate the information and to dissemination by all DoD intelligence components. These limitations do not apply when information is:

- . disseminated with the consent of the person the information concerns;
- . available publicly;
- . about persons or organizations that do not qualify as United States persons;
- . not immediately identified with a United States person because the identity of the United States person is deleted and a generic term or symbol is substituted so that the information cannot be connected with an identifiable United States person. When the name of the United States person is included in a brand name, the name of a military or political doctrine or other descriptive figures of speech that do not disclose information about the United States person, the information may be treated in the same manner as if a generic term or symbol were used.
- . disseminated solely for administrative purposes not related to intelligence or security;
- . disseminated in accordance with law; or
- . disseminated for law enforcement purposes.

Sec. 2. Definitions

The definitions of the following terms, set out in Appendix A , are applicable to this procedure:

- . administrative purposes
- . available publicly
- . communications security
- . consent
- . contractor
- . counterintelligence
- . DoD intelligence components
- . electronic surveillance
- . employee
- . foreign intelligence
- . intelligence
- . intelligence method
- . intelligence source
- . international terrorist activities
- . law enforcement
- . law enforcement agencies
- . narcotics production and trafficking
- . personnel security
- . personnel security investigation
- . physical security
- . reasonable belief
- . United States
- . United States persons

Sec. 3. Policy

The Department of Defense disseminates information about United States persons that was collected and stored by intelligence components pursuant to Procedures 1 and 2 only to DoD components and contractors; to federal, state and local government entities authorized to receive such information for the performance of lawful government function, and to foreign governments under approved arrangements or agreements.

Sec. 4. Procedures

A. General criteria for dissemination. Information about United States persons that identifies those persons may

be disseminated only if it is

- . information that was collected under Procedure 1,
- . foreign intelligence or counterintelligence gathered abroad,
- . Foreign intelligence or counterintelligence that was collected from electronic surveillance conducted in compliance with Procedures 4, 5, or 6; or
- . Foreign intelligence or counterintelligence that was collected from cooperating sources in the United States;

and it has been determined that each entity that is a recipient has a requirement in the performance of its official duties for the identity of the United States person, and the identity of the United States person is required for the understanding or utilization of the information.

B. Dissemination within the Department of Defense. Information about United States persons that identifies those persons may be disseminated to other components within the Department of Defense or to contractors only if it meets the criteria under Section 4.A. and, at the time the information is disseminated, it also meets one of the following criteria:

1. The information constitutes foreign intelligence or counterintelligence;
2. The information is necessary to provide for the physical security of the installation of any DoD component or the contractor to whom it is disseminated;
3. The information is necessary to provide for personnel security of the Department of Defense or the contractor to whom it is disseminated;
4. The information relates to a violation of the Uniform Code of Military Justice, 10 U.S.C. §§ 801-940 (ref. (g)) or to a violation of foreign, federal, state or local law by a DoD employee or to an activity that may occur in the future and if it occurs is likely to involve such a violation;

5. The information is necessary to provide for communications security of the United States Government;
6. The information is necessary for the protection of intelligence sources and methods; -
7. The information is enciphered or reasonably believed to contain secret meaning and the actual meaning has not been ascertained; or
8. The information has been collected pursuant to a judicial warrant and the dissemination is consistent with the warrant.

Where practicable, information about United States persons that identifies those persons and is disseminated to other components within the Department of Defense should be transmitted in a manner that alerts the recipient that information about United States persons is contained therein and has been processed in accordance with these procedures.

C. Dissemination to Agencies within the Intelligence Community. Information about United States persons that identifies those persons may be disseminated to other agencies within the intelligence community not otherwise expressly provided for by these procedures only if it meets the criteria under Section 4.A. and, at the time the information is disseminated, it also meets one of the following criteria:

1. The information constitutes foreign intelligence or counterintelligence;
2. The information is necessary to provide for the physical security of the Department of Defense, its contractors or the agency to which it is disseminated;
3. The information is necessary to provide for the personnel security of the agency to which it is disseminated;

4. The information is necessary to provide for the communications security of the United States Government;
5. The information is necessary for the protection of intelligence sources and methods;
6. The information is necessary for the evaluation of a potential source of assistance in an foreign intelligence or counterintelligence activity
7. The information has been collected pursuant to a judicial warrant and the dissemination is consistent with the warrant; or
8. The information is necessary to provide for the physical security (including safety) of the personnel of the agency to which it is disseminated.

D. Dissemination to other federal departments and agencies.

Information about United States persons that identifies those persons may be disseminated to federal government departments or agencies outside the intelligence community not otherwise expressly provided for by these procedures, including the Executive Office of the President, only if the information meets the criteria under Section 4.A. and, at the time the information is disseminated, it also meets one of the following criteria:

1. The information constitutes foreign intelligence or counterintelligence;
2. The information is necessary to provide for the communications security of the United States Government;
3. The information was collected outside the United States for personnel security purposes in response to a request from another federal government department or agency and is disseminated to the requesting agency;

4. The information has been collected pursuant to a judicial warrant and the dissemination is consistent with the warrant;
5. The information is necessary to provide for the physical security or the personnel security (including safety) of the agency to which it is disseminated; or
6. The information is disseminated to the Attorney General as evidence of a crime under guidelines adopted by the Attorney General. Dissemination under this subsection shall be through the DoD General Counsel.

E. Dissemination to FBI. Information about United States persons that identifies those persons may be disseminated to the Federal Bureau of Investigation only if it meets the criteria under Section 4.A. and, at the time the information is disseminated, it meets one of the following criteria:

1. The information constitutes foreign intelligence or counterintelligence;
2. The information relates to a violation of federal, state or local law or to an activity that may occur in the future and if it occurs is likely to involve a violation of federal, state or local law;
3. The information relates to narcotics production or trafficking activity that violates federal, state or local law or would be such a violation if the activity occurred in the United States;
4. The information relates to international terrorist activities that violate federal, state or local law or would be a violation if the activities occurred in the United States;

5. The information relates to the physical safety of a person protected by the United States Secret Service;
6. The information relates to the physical safety of a person protected by the Department of State;
7. The information relates to the physical security of the Department of Defense or its contractors;
8. The information is provided for a personnel security investigation by the FBI;
9. The information is necessary to provide for the communications security of the United States Government; or
10. The information is necessary for the protection of intelligence sources and methods.

F. Dissemination to other law enforcement authorities.

Information about United States persons that identifies those persons may be disseminated to federal, state or local law enforcement authorities only if it meets the criteria under Section 4.A. and one of the following criteria:

1. The information relates to a violation of federal, state or local law or to an activity that may occur in the future and if it occurs is likely to involve a violation of federal, state or local law;
2. The information relates to narcotics production or trafficking activity that is a violation of federal, state or local law or would be such a violation if the activity occurred in the United States; or

3. The information relates to international terrorist activities that violate federal, state or local law or would be a violation if the activities occurred in the United States.

G. Dissemination to Secret Service. Information about United States persons that identifies those persons may be disseminated to the Secret Service only if it meets the criteria under Section 4.A. and meets one of the following criteria:

1. The information relates to the physical safety of a person protected by the Secret Service including persons in facilities protected by the Secret Service; or
2. The information relates to international terrorist activities.

H. Dissemination to Department of State. Information about United States persons that identifies those persons may be disseminated to the Department of State only if it meets the criteria under Section 4.A. and is:

1. Information disseminated under Section 4.D.;
2. Information that relates to international terrorist activities that violate federal, state or local law or would be a violation if the activities occurred in the United States;
3. Information that relates to the physical safety of a person protected by the Department of State; or
4. Information disseminated in response to a request for support of Department of State consular activities for the welfare of the person whom the information concerns.

I. Dissemination to DEA. Information may be disseminated to the Drug Enforcement Administration only if it meets the criteria under Section 4.A. and is information related to narcotics production or trafficking activity that is a violation of federal, state or local law or would be such a violation if the activity occurred in the United States.

J. Dissemination to Foreign Governments. Information about United States persons that identifies those persons may be disseminated to foreign governments only if:

1. The information is furnished in furtherance of United States interests pursuant to an agreement or understanding with such government by the United States; and
2. The information disseminated falls within one of the following categories --
 - a. The information relates to a violation of foreign law or to an activity that may occur in the future and if it occurs is likely to involve a violation of foreign law;
 - b. The information relates to narcotics production or trafficking activities that would violate U.S. law if the activity occurred in the United States, or that violate foreign law;
 - c. The information relates to international terrorist activities that would violate U.S. law if the activities occurred in the United States, or that violate foreign law;

- d. The information relates to the safety of any person;
- e. The information constitutes foreign intelligence or counterintelligence; or
- f. The information is enciphered or reasonably believed to contain secret meaning and the actual meaning cannot be or has not been ascertained.

K. Other Dissemination. Dissemination other than as provided in subsections 4.B. through J. above must be approved by the General Counsel of the Department of Defense. Such approval shall be based on a determination that the proposed dissemination complies with applicable laws, executive orders and regulations.

Date of Attorney General approval:

GBB 8/15/79

Date of Secretary of Defense approval:

W. Graham Clayton

30 NOV 1979

PROCEDURE 4. GENERAL REQUIREMENTS
FOR ELECTRONIC SURVEILLANCE
WITHIN THE UNITED STATES

Sec. 1. Applicability and Scope

This procedure implements the Foreign Intelligence Surveillance Act of 1978, ref. (h), and applies to electronic surveillance conducted by DoD intelligence components within the United States.

Sec. 2. General Rules

A. Electronic surveillance pursuant to judicial warrant.

A DoD intelligence component may conduct electronic surveillance within the United States pursuant to a judicial warrant issued by a judge of the court appointed pursuant to the Foreign Intelligence Surveillance Act of 1978. Applications for judicial warrants will be made through the Attorney General only after prior clearance by the DoD General Counsel.

B. Authority to request electronic surveillance. Authority to approve submission of applications for electronic surveillance under the Foreign Intelligence Surveillance Act of 1978 shall be limited to the Secretary of Defense, the Deputy Secretary of Defense, the Secretary or Acting Secretary of a Military Department, and the Director of the National Security Agency. Authority to make applications shall be vested in such employees of DoD intelligence components as are designated by one of the approval authorities above.

C. Electronic surveillance in emergency situations.

A DoD intelligence component may conduct electronic surveillance within the United States in emergency situations under an approval from the Attorney General even though a warrant would otherwise be required. An emergency situation exists when:

1. The time required to secure the prior approval would cause failure or delay in obtaining significant foreign intelligence or counterintelligence and such failure or delay would result in substantial harm to the national security;
2. A person's life or physical safety is reasonably believed to be in immediate danger; or
3. The physical security of a Defense installation or government property is reasonably believed to be in immediate danger.

The head of any DoD intelligence component may contact the Attorney General directly in an emergency. If possible, such requests should be made through the DoD General Counsel. If a warrant is denied in a subsequent proceeding, the information collected under the emergency authorization must be destroyed unless it indicates a threat of death or serious bodily harm to any person, and the Attorney General approves retention of the information.

Date of Attorney General approval:

GRB 8/15/79

Date of Secretary of Defense approval:

W. Graham Claytor Jr.

30 SEP 1979

ADDENDUM TO PROCEDURE 4: IMPLEMENTATION
OF GENERAL REQUIREMENTS

Sec. 1. Applicability and Scope

Procedure 4 applies only to electronic surveillance conducted by DoD intelligence components within the United States. This procedure does not apply to:

- . activities conducted with the consent of one or more of the parties surveilled; the definition of electronic surveillance includes only non-consensual surveillance;
- . electronic surveillance for law enforcement purposes; the Foreign Intelligence and Surveillance Act, ref. (h), provides only for collecting foreign intelligence and counterintelligence;
- . electronic surveillance under Section 102(a) of ref. (h); those surveillances do not involve United States persons and are conducted under Attorney General certification;
- . the use of electronic equipment for testing; such use is governed by Procedure 8 established under section 2-202 of Executive Order 12036, ref. (f) and subsection 105(f)(1) of ref. (h);
- . the use of electronic communications and surveillance equipment for training; such use is governed by Procedure 9 established under Section 2-202 of Executive Order 12036, and subsection 105(f)(3) of ref. (h);
- . measures conducted within the United States for purposes of determining whether electronic surveillance equipment is being used unlawfully; these measures are governed by Procedure 7 established under Section 2-202 of the Executive Order and subsection 103(f)(2) of ref. (h); or
- . the use within the United States of television cameras or other electronic means of continuous monitoring not directed at the acquisition of wire, radio, or oral communications; use of such means for the purposes of physical surveillance is governed by Procedure 10 established under Section 2-203 of the Executive Order and Section 102(b) of ref. (h).

Sec. 2. Definitions

The following definitions, set out in Appendix A, are applicable to this procedure:

- . agent of a foreign power
- . clandestine intelligence agency
- . consent
- . counterintelligence
- . DoD intelligence components
- . electronic communications equipment
- . intelligence
- . international terrorist activities
- . law enforcement
- . physical security
- . reasonable belief
- . United States
- . wire communication

NOTE: THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978 USES DEFINITIONS THAT IN SOME INSTANCES ARE DIFFERENT FROM THOSE PRESENTED IN APPENDIX A. THIS ACT GOVERNS ELECTRONIC SURVEILLANCE WITHIN THE UNITED STATES FOR FOREIGN INTELLIGENCE PURPOSES, SO FOR PURPOSES OF THIS PROCEDURE ONLY THE FOLLOWING DEFINITIONS OF "ELECTRONIC SURVEILLANCE," "FOREIGN INTELLIGENCE INFORMATION," "FOREIGN POWER," AND UNITED STATES PERSON" APPLY:

Electronic surveillance, in this context, means:

1. the acquisition by an electronic, mechanical or other surveillance device of the contents of any wire communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentional targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes;
2. the acquisition by an electronic, mechanical or other surveillance device of the contents of any wire communication to or from a person in the United States, without the consent of any party thereto, if such acquisition occurs in the United States;

- 3, the intentional acquisition by an electronic, mechanical or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States; or
- 4, the installation or use of an electronic, mechanical, or other surveillance device in the United States for monitoring to acquire information, other than from a wire or radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

Foreign Intelligence information, in this context, means:

1. information that relates to, and if concerning a United States person is necessary to, the ability of the United States to protect against--
 - a. actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;
 - b. sabotage or international terrorism by a foreign power or an agency of a foreign power; or
 - c. clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power, or
2. information with respect to a foreign power or foreign territory that relates to, and if concerning a United States person is necessary to--
 - a, the national defense or the security of the United States; or
 - b. the conduct of the foreign affairs of the United States.

Foreign power, in this context, means:

1. a foreign government, or any component thereof, whether or not recognized by the United States;

2. a faction of a foreign nation or nation, not substantially composed of United States persons;
3. an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;
4. a group engaged in international terrorism or activities in preparation therefore;
5. a foreign-based political organization, not substantially composed of United States persons; or
6. an entity that is directed and controlled by a foreign government or governments.

United States person, in this context, means a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section 101(a)(2) of the Immigration and Nationality Act, ref. (i)), an unincorporated association, a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power.

Electronic surveillance is conducted "within the United States" in this context when it is designed to intercept wire or radio communication sent by or intended to be received by a known United States person within the United States by intentionally targeting that United States person; is designed to intercept in the United States a wire communication sent to or from a person in the United States; is designed to intercept a radio communication when the sender and all recipients are located within the United States under circumstances where the communicants have a reasonable expectation of privacy; or involves the installation of an electronic, mechanical, or

other surveillance device to acquire information from other than a wire or radio communication under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes. Electronic surveillance that does not fall within the above definition and that results in the incidental acquisition of communications sent from or intended for receipt within the United States does not thereby become electronic surveillance within the United States.

Sec. 3. Policy

Electronic surveillance by DoD intelligence components within the United States is conducted only pursuant to the Foreign Intelligence Surveillance Act of 1978, ref. (h).

Sec. 4. Procedures

A. Electronic surveillance pursuant to judicial warrant.

Requests for judicial warrants shall include--

1. the identity, if known, or a description of the target of the electronic surveillance;
2. a statement of the facts and circumstances sufficient to support a reasonable belief that
 - a. the target of the electronic surveillance is a foreign power or an agent of a foreign power; and
 - b. each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power;

3. a statement of the proposed minimization procedures (in most cases this will be a standard set of procedures approved by the Attorney General; these procedures can be modified where necessary to fit particular circumstances);
4. a detailed description of the nature of the information sought and the type of communications or activities to be subjected to the surveillance;
5. a statement of the means by which the surveillance will be effected;
6. a statement whether physical entry is required to effect the surveillance;
7. a statement of the facts concerning all previous applications that have been made to any judge involving any of the persons, facilities, or places specified in the application, and the action taken on each previous application;
8. a statement of the period of time for which the electronic surveillance is required to be maintained, and if the nature of the intelligence gathering is such that the approval of the use of electronic surveillance should not automatically terminate when the described type of information has first been obtained, a description of facts supporting the belief that additional information of the same type will be obtained thereafter; and
9. whenever more than one electronic, mechanical or other surveillance device is to be used with respect to a particular proposed electronic surveillance, the coverage of the devices involved and what minimization procedures apply to information acquired by each device.

Each request for a warrant must include a draft of a proposed certification from the Assistant to the President for National Security Affairs, the Secretary of Defense or the Deputy Secretary of Defense. The certification is required by statute to include a finding by the certifying official that--

- a. the information is foreign intelligence information;
- b. the purpose of the surveillance is to obtain foreign intelligence information;
- c. such information cannot reasonably be obtained by normal investigative techniques;
- d. the type of foreign intelligence information being sought falls into one of the statutory categories. The statutory categories are:

first, information that relates to, and if concerning a United States person is necessary to, the ability of the United States to protect against--

- (1) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;
- (2) sabotage or international terrorist activities by a foreign power or an agent of a foreign power; or
- (3) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

second, information with respect to a foreign power or foreign territory that relates to and if concerning a United States person is necessary to--

- (1) the national defense or the security of the United States; or
- (2) the conduct of the foreign affairs of the United States.

The certification must include a statement of the basis for the findings under subsections c. and d. above.

B, Authority to request electronic surveillance. In most cases, the judge will require that the DoD official who is the applicant for a warrant be present in the courtroom when the judge considers the application. Designation of officials for this purpose should be flexible.

C, Electronic surveillance in emergency situations. The Foreign Intelligence Surveillance Act (ref. (h)) permits the Attorney General to grant emergency authorization only in limited circumstances when the factual basis exists for issuance of a warrant under Section 4.A. of Procedure 4 and surveillance for longer than 24 hours requires a warrant issued under Section 4.A. Requests for warrants subsequent to an emergency approval by the Attorney General shall be processed under Section 4.A.

Date of Secretary of Defense approval: W. Graham Claytor Jr.
20 JAN 1979

PROCEDURE 5. GENERAL REQUIREMENTS FOR ELECTRONIC
SURVEILLANCE OF TARGETS OUTSIDE THE UNITED STATES

Sec. 1. Applicability and Scope

This procedure implements Section 2-202 of Executive Order 12036, ref. (f), and applies to electronic surveillance directed against the communications of a United States person who is outside the United States. This procedure does not apply to:

- . activities conducted with the consent of one or more of the parties surveilled; the definition of electronic surveillance includes only nonconsensual surveillances;
- . electronic surveillance for law enforcement purposes;
- . electronic surveillance directed against a person who does not qualify as a United States person;
- . the use of electronic surveillance equipment for training or testing; those uses are governed by Procedures 8 and 9,
- . measures conducted outside the United States for purposes of determining whether electronic surveillance equipment is being used unlawfully and is being directed against United States Government facilities; those measures are governed by Procedure 7; and
- . the use outside the United States of television cameras or other electronic means of continuous monitoring; that use is governed by Procedure 10.

Sec. 2. Definitions

The following definitions, set out in Appendix A, are applicable to this procedure:

- . clandestine intelligence activity
- . consent
- . counterintelligence
- . DoD intelligence components

- . electronic surveillance
- . electronic surveillance equipment
- . employee
- . foreign intelligence
- . foreign power
- . international terrorist activities
- . law enforcement
- . physical security
- . reasonable belief
- . sabotage
- . United States
- . United States person
- . wire communication

Electronic surveillance is "directed against a United States person" when the surveillance is intentionally targeted against or designed to intercept the communications of that person. Electronic surveillance directed against persons who are not United States persons that results in the incidental acquisition of the communications of a United States person does not thereby become electronic surveillance directed against a United States person.

The regulation of electronic surveillance under this procedure is intended to be applied in conjunction with the regulation of electronic surveillance "within the United States" under Procedure 4 so that the intentional interception of all wire or radio communications of United States persons is covered by one procedure or the other. The place where the electronic surveillance is conducted is not the deciding factor. Electronic surveillance of communications that originate and terminate outside the United States can be conducted from within the United States and still fall under this procedure rather than Procedure 4.

Sec. 3. Policy

Electronic surveillance by DoD intelligence components directed against the communications of a United States person who is outside the United States is conducted only pursuant to a military warrant, the approval of the Attorney General, or in emergency circumstances the approval of a senior official of the Department of Defense.

Sec. 4. ProcedureA. Electronic surveillance pursuant to military warrant.

A DoD intelligence component may conduct electronic surveillance directed at a United States person who is subject to the Uniform Code of Military Justice, 10 U.S.C. §802, Art. 2(1) through (10), pursuant to a warrant issued by a military judge located outside the United States who is authorized by 10 U.S.C. §826 to preside at general courts-martial and who has been designated by the Secretary of Defense to exercise this authority. The warrant shall specify the person or location to be subjected to electronic surveillance and shall be based on a finding that:

1. There is probable cause to believe the target of the electronic surveillance is --
 - a. a person who, for or on behalf of a foreign power, is engaged in clandestine intelligence activities (including covert activities intended to affect the political or governmental process), sabotage, or international terrorist activities, or who conspires with, or knowingly aids and abets such a person engaging in such activities;
 - b. a person who is an officer or employee of a foreign power;
 - c. a person unlawfully acting for, or pursuant to the direction of, a foreign power. The mere fact that a person's activities may benefit or further the aims of a foreign

power is not enough to bring that person under this subsection absent evidence that the person is taking direction from, or acting in knowing concert with, the foreign power;

2. The electronic surveillance is necessary to obtain significant foreign intelligence or counter-intelligence;
3. The significant foreign intelligence or counter-intelligence expected to be obtained from the electronic surveillance could not reasonably be obtained by other less intrusive collection techniques;
4. In cases where physical trespass is involved, the physical trespass is the least amount of intrusion that will accomplish the objective.
5. The electronic surveillance is consistent with United States obligations under the applicable Status of Forces Agreement;
6. The duration of the electronic surveillance is reasonable and not in excess of 90 days; and
7. There is adequate minimization of information about United States persons.

Intelligence components shall report periodically on use of the authority granted by this Section. Reporting requirements shall be established by the general counsels of the military services.

B. Electronic surveillance pursuant to Attorney General approval. A DoD intelligence component may conduct electronic surveillance directed at a United States person if the surveillance is approved by the Attorney General. Requests for approval will be forwarded to the Attorney General through the DoD General Counsel or the NSA General Counsel. Each request shall include: .

1. An identification or description of the target;

2. A statement of the facts supporting a finding that the requirements of subsections 4.A.1., 2., and 3. are met;
3. A description of the significant foreign intelligence or counterintelligence expected to be obtained from the electronic surveillance;
4. A description of the means by which the electronic surveillance will be effected;
5. If physical trespass is required to effect the surveillance, a statement of facts supporting a finding that the means involve the least amount of intrusion that will accomplish the objective;
6. A statement of the period of time, not to exceed 90 days, for which the electronic surveillance is required; and
7. A description of the expected dissemination of the product of the monitoring including a description of the means by which communications that are not sent or received by persons targeted will be protected from storage or dissemination.

C. Electronic surveillance in emergency situations. A

DoD intelligence component may conduct electronic surveillance outside the United States directed at a United States person in emergency situations under the following limitations:

1. Senior officials of the Department of Defense, designated in subsection 4.D.2. below may authorize electronic surveillance outside the United States directed at a United States person in emergency situations when securing a military warrant or the prior approval of the Attorney General is not practical because --
 - a. the time required would cause failure or delay in obtaining significant foreign intelligence or counterintelligence and such failure or delay would result in substantial harm to the national security;

- b. a person's life or physical safety is reasonably believed to be in immediate danger; or
 - c. The physical security of a Defense installation or government property is reasonably believed to be in immediate danger.
 - 2. Except when a person's life is in danger, the senior official authorizing such emergency surveillance shall make a finding that the requirements of §4(A)(1) are met and shall notify the DoD General Counsel promptly.
 - 3. The Attorney General shall be notified by the DoD General Counsel as soon as possible of the nature of the electronic surveillance, the circumstances surrounding its authorization, and the results thereof.
 - 4. Electronic surveillance authorized by a senior official pursuant to this section may not continue longer than the time required for a decision by the Attorney General and in no event longer than 72 hours.
- D. Officials authorized to request foreign electronic surveillance.
- 1. The following officials may authorize or request approval of foreign electronic surveillance under subsections 4.A. and B. above --
 - a. the Secretary and Deputy Secretary of Defense;
 - b. the Secretaries and Acting Secretaries of the Military Departments; or
 - c. the Director of the National Security Agency.
 - 2. Authorization for electronic surveillance under subsection 4.C. may be granted by --

- a. any civilian Presidential appointee,
- b. any general or flag officer, or
- c. any head of a DoD intelligence component.

Date of Attorney General approval:

Date of Secretary of Defense approval:

BPE 11/20/79
W. Graham Clayton
30 MAY 1979

PROCEDURE 6: SIGNALS INTELLIGENCE ACTIVITIES

Sec. 1. Applicability and Scope

This procedure implements Sections 2-202 and 2-208 of Executive Order 12036, ref. (f). This procedure governs the conduct by the United States Signals Intelligence System of signals intelligence activities that involve the collection, storage and dissemination of

- . nonpublic communications, originated or intended for receipt in the United States, without the consent of a party thereto; and
- . nonpublic communications of or concerning a United States person, without such person's consent.

This procedure does not apply to:

- . any electronic surveillance that is conducted under Attorney General certification pursuant to the authority contained in Section 102(a) of the Foreign Intelligence Surveillance Act of 1978 because those surveillances are not directed against United States persons;
- . signals intelligence and communications security activities that are not required under Executive Order 12036 or the Foreign Intelligence Surveillance Act of 1978 to be conducted pursuant to procedures approved by the Attorney General because those surveillances do not contain information concerning United States persons.

This procedure is supplemented by a classified regulation approved by the Attorney General. That regulation contains extensive, detailed limitations that assure that no individual who is a United States person is the target of signal intelligence activities except as authorized in accordance with procedures 4 and 5. Any information collected incidentally about United States persons is subjected to minimization procedures approved by the Attorney General.

Sec. 2. Definitions

The following definitions, set out in Appendix A, are applicable to this procedure:

- . collecting agency
- . communications security
- . consent
- . contractor
- . counterintelligence
- . electronic surveillance
- . foreign intelligence
- . intelligence
- . reasonable belief
- . signals intelligence
- . United States
- . United States person

The following additional definitions or supplements to definitions in Appendix A apply to this procedure:

Communicant means a sender or intended recipient of a communication.

Communications concerning a United States person are those in which the United States person is identified in the communication. A United States person is identified when the person's name, unique title, address or other personal identifier is revealed in the communication in the context of activities conducted by that person or activities conducted by others and related to that person. A reference to a product by brand name or manufacturer's name or the use of a name in a descriptive sense, as, for example, "Monroe Doctrine", is not an identification of a United States person.

Foreign communication means a communication that has at least one communicant outside of the United States, or that is entirely among foreign powers or between a foreign power and officials of a foreign power (but not including communications

intercepted by electronic surveillance directed at premises used predominately for residential purposes).

Interception means the acquisition by the United States Signals Intelligence System through electronic means of a nonpublic communication to which it is not an intended party, and the processing of the contents of that communication into an intelligible form but not including the display of signals on visual display devices intended to permit the examination of the technical characteristics of the signals without reference to the information content carried by the signal.

Military tactical communications means United States and Allied military exercise communications within the United States and abroad necessary for the production of simulated foreign intelligence and counterintelligence or to permit an analysis of communications security.

United States Signals Intelligence System means the unified organization for signals intelligence activities under the direction of the Director, National Security Agency/Central Security Service, comprised of the National Security Agency, the Central Security Service, the components of the military services authorized to conduct signals intelligence and such other entities (other than the Federal Bureau of Investigation) as are authorized by the National Security Council or the Secretary of Defense to conduct signals intelligence. FBI activities are governed by procedures promulgated by the Director, FBI.

Sec. 3. Policy

The United States Signals Intelligence System collects, processes, stores and disseminates only foreign communications and military tactical communications. The Director, National Security Agency, is assigned responsibility for signals intelligence activities and ensures they are carried out so that communications of United States persons are acquired to the minimum extent consistent with the foreign intelligence needs of the nation and are used only in accordance with the restrictions and limitations of this regulation.

Sec. 4. Procedures

A. Foreign Communication. The United States Signals Intelligence System may collect, process, store and disseminate foreign communications that are also communications of or concerning United States persons, but only in accordance with the restrictions in this regulation. For purposes of the signals intelligence activities, the following guidelines will apply in determining whether a person is a United States person:

1. A person known to be currently in the United States will be treated as a United States person unless that person is positively identified as an alien who has not been admitted for permanent residence or if the nature of the person's communications or other indicia in the contents or circumstances of such communications give rise to a reasonable belief that such person is not a United States person.
2. A person known to be currently outside the United States, or whose location is not known, will not be treated as a United States person unless such person can be identified positively as such or the nature of the person's communications or other indicia in the contents or circumstances of such communications give rise to a reasonable belief that such person is a United States person.

3. A person known to be an alien admitted for permanent residence may be assumed to have lost status as a United States person if the person leaves the United States and it is known that the person is not in compliance with the administrative formalities provided by law (8 U.S.C. §1203) that enable such person to re-enter the United States without regard to the provisions of law that would otherwise restrict an alien's entry into the United States. The failure to follow the statutory procedures provides a reasonable basis to conclude that such alien has abandoned any intention of maintaining status as a permanent resident alien.
4. An unincorporated association whose headquarters are located outside the United States may be presumed not to be a United States person unless the collecting agency has information indicating that a substantial number of members are citizens of the United States or aliens lawfully admitted for permanent residence.

B. Military tactical communications. The United States Signals Intelligence System may collect, process, store and disseminate military tactical communications that are also communications of or concerning United States persons but only in accordance with the restrictions in this directive. "Military tactical communications" is a defined term and should be construed strictly.

1. Collection. Collection efforts will be conducted in the same manner as in the case of signals intelligence for foreign intelligence purposes and must be designed in such a manner as to avoid to the extent feasible the intercept of non-exercise related communications.
2. Storage and processing. Military tactical communications may be stored and processed without deletion of references to United States persons if --

- (a) the names and communications are of United States persons who are exercise participants (whether military, government, or contractor), or are contained in, or such communications constitute, exercise-related communications, fictitious communications or information prepared for the exercise; and
 - (b) communications of United States persons not participating in the exercise that are inadvertently intercepted during the exercise are destroyed as soon as is feasible, provided that a record describing the signal or frequency user in technical and generic terms may be retained for signal identification and collection avoidance purposes.
3. Dissemination. Dissemination of military tactical communications and exercise reports or information files derived from such communications is limited to those authorities and persons participating in or conducting reviews and critiques of such exercise.

Date of Attorney General approval:

5/5/80 B&C

Date of Secretary of Defense approval:

6/6/80 GAO

PROCEDURE 7: COMMUNICATIONS SECURITY ACTIVITIES

Sec. 1: Applicability and Scope

This procedure implements Section 2-202 of Executive Order 12036, ref. (f), which refers to electronic surveillance equipment, and Section 105(f)(2) of the Foreign Intelligence Surveillance Act of 1978, ref. (h), which refers to electronic surveillance equipment. It applies to technical counter-measures and to vulnerability surveys. Nothing in this Procedure supercedes any provision of Procedure 4 or 5.

Sec. 2. Definitions

The following definitions, set out in Appendix A, are applicable to this procedure:

- . communications security
- . contractor
- . DoD intelligence components
- . electronic surveillance
- . electronic communications equipment
- . foreign power
- . United States
- . United States person

The term technical countermeasures, when applied to activities within the United States, includes measures to determine the existence and capability of electronic surveillance equipment being used unlawfully. The term includes the use of electronic surveillance equipment and other electronic or mechanical devices necessary to determine whether facilities, communications equipment, or other equipment or devices owned or controlled by the United States Government or by Department of Defense contractors are susceptible to unlawful electronic surveillance; or to determine whether electronic surveillance

equipment is present and is being used unlawfully. When applied to activities outside the United States the requirement with respect to "unlawful" use and "unlawful" electronic surveillance does not apply; any use and any surveillance is included.

Communications security entity means each entity subject to the guidance of the Secretary of Defense, acting as the executive agent of the United States Government, and the Director, National Security Agency, acting for the Secretary in executing responsibilities as executive agent, that carries out any of the communications security activities of the United States Government.

Hearability survey means monitoring radio communications to determine whether a particular radio signal can be received at one or more locations and, if reception is possible, to determine the quality of reception over time.

Sec. 3. Policy

DoD intelligence components use technical countermeasures and conduct vulnerability surveys, to the maximum extent that is practical, without interception of or interference with the communications of United States persons. The Director, National Security Agency, is assigned responsibility for communications security activities.

Sec. 4. Procedures

A. Criteria for countermeasures. A DoD intelligence component may use technical countermeasures against electronic surveillance equipment being used by persons not authorized to conduct electronic surveillance if;

1. The use is limited in duration and scope to that necessary to determine the existence and capability of such equipment;
2. The use is solely for the purpose of determining the existence and capability of such equipment;
3. The use is at the request or with the consent of an authorized official in charge of a facility, organization or system where the countermeasures are to be undertaken; and
4. Access to the content of communications acquired during the use of countermeasures is limited to persons involved directly in conducting such measures, and any content acquired is destroyed as soon as practical or upon completion of the particular use except that information with respect to violations of federal law may be transmitted to the Attorney General and information with respect to violations of military law may be transmitted to the Secretary of the Military Department. A record of the types of communications and information subject to acquisition by the illegal electronic surveillance equipment may be retained. Such information may be used only to protect against unlawful electronic surveillance or to enforce criminal laws if such use outweighs the possible harm to national security.

B. Criteria for vulnerability surveys. Nonconsensual surveys may be conducted to determine the potential vulnerability to intelligence services of a foreign power of

transmission facilities of communications common carriers, other private commercial entities, and entities of the Federal Government, subject to the following limitations:

1. No vulnerability survey may be conducted without the prior written approval of the Director, National Security Agency or a designee;
2. No transmission may be acquired aurally;
3. No content of any transmission may be acquired by any means;
4. No transmissions may be recorded; and
5. No report or log may identify any United States person or entity except to the extent of identifying transmission facilities that are vulnerable to surveillance by foreign powers. If the identities of the users of such facilities are not identical with the identities of the owners of the facilities, the identity of such users may be obtained, but not from the content of the transmissions themselves, and may be included in such report or log. Reports may be disseminated. Logs may be disseminated only if required to verify results contained in reports.

C. Hearability surveys. The National Security Agency may conduct or may authorize the conduct of hearability surveys of telecommunications that are transmitted in the United States.

1. Collection. Where practicable, consent will be secured from the owner or user of the facility against which the hearability survey is to be conducted prior to the commencement of the survey.
2. Processing and storage. Information collected during a hearability survey must be processed and stored as follows:
 - a. The content of communication may not be recorded nor included in any report.

- b. No microwave transmission may be demulti-plexed or demodulated for any purpose.
 - c. No report or log may identify any person or entity except to the extent of identifying the transmission facility that can be intercepted from the intercept site. If the identities of the users of such facilities are not identical with the identities of the owners of the facilities, and their identities are relevant to the purpose for which the hearability surveys has been conducted, the identity of such users may be obtained provided such identities may not be obtained from the content of the transmission themselves.
3. Dissemination. Reports may be disseminated only within the United States Government. Logs may not be disseminated unless required to verify results contained in reports.

D. Other communications security monitoring. Other communications security monitoring that is directed against the communications of United States persons may be conducted only with the consent of one of the parties to the communication.

Date of Attorney General approval:

Date of Secretary of Defense approval:

GAB 8/15/79

W. Graham Clayton

30 MAY 1979

PROCEDURE 8. TESTING AND CALIBRATION OF
ELECTRONIC EQUIPMENT

Sec. 1. Applicability and Scope

This procedure implements Section 2-202 of Executive Order 12036, ref. (f), which refers to electronic communications equipment; and Section 103(f)(1) of the Foreign Intelligence Surveillance Act of 1978, ref. (h), which refers to electronic equipment. It applies to the testing and calibration by Department of Defense intelligence components of electronic equipment that has the capability to intercept communications.

Sec. 2. Definitions

The following definitions, set out in Appendix A, are applicable to this procedure:

- . DoD intelligence components
- . electronic surveillance
- . employee
- . United States
- . United States person

Sec. 3. Policy

Testing and calibration of electronic equipment that can intercept communications is conducted, to the maximum extent that is practical, without interception of the communications of United States persons.

Sec. 4. Procedures

A. Criteria for testing and calibration. A DoD intelligence component may test and calibrate electronic equipment subject to the following limitations:

1. To the maximum extent that is practical, the following should be used --
 - a. laboratory generated signals,
 - b. Department of Defense official agency communications with consent from an appropriate DoD official,
 - c. official government agency communications with consent from an appropriate official of the originating agency,
 - d. individual government employee communications with consent from the employee, or
 - e. communications transmitted between terminals located outside the United States not used by any known United States person.
2. Where it is not practical to test electronic equipment solely against signals described in subsection A(1) above, testing may be conducted provided--
 - a. it is limited in scope and duration to that necessary to determine the capability of the equipment;
 - b. no particular United States person is targeted intentionally without consent and it is not reasonable to obtain the consent of the persons incidentally subjected to the surveillance; and
 - c. the test does not exceed 90 calendar days.

B. Time limitations. Where the test involves communications other than those identified in subsection A.1. above and a test period longer than 90 days is required, the DoD intelligence component shall submit a test proposal to the DoD General Counsel or the NSA General Counsel for transmission to the Attorney General for approval. The test proposal shall state the requirement for an extended test involving such communications, the

nature of the test, the organization that will conduct the test, and the proposed disposition of any signals or communications acquired during the test.

C. Storage and dissemination. The content of any communication acquired during a test shall be:

1. Retained only for the purpose of determining the capability of the electronic equipment;
2. Disclosed only to persons conducting the test; and
3. Destroyed upon completion of the testing.

The technical parameters of a communication, such as frequency, modulation, and time of activity of acquired electronic signals may be retained and used for test reporting or collection avoidance purposes. Such parameters may be disseminated to other DoD intelligence components and other entities authorized to conduct electronic surveillance provided such dissemination and use are limited to testing or collection avoidance purposes. No content of any communication may be retained or used.

Date of Attorney General approval: -

GA B. 8/15/75

Date of Secretary of Defense approval:

W. Graham Claytor Jr.

30 Nov 1979

PROCEDURE 9. TRAINING OF PERSONNEL IN
THE OPERATION AND USE OF ELECTRONIC
COMMUNICATIONS AND SURVEILLANCE EQUIPMENT

Sec. 1. Applicability and Scope

This procedure implements Section 2-202 of Executive Order 12036, ref. (f), which refers to electronic communications equipment; and Section 104(f)(3) of the Foreign Intelligence Surveillance Act of 1978, ref. (h), which refers to electronic surveillance equipment. It applies to the training of the personnel by DoD intelligence components in the operation and use of electronic communications and surveillance equipment. These procedures do not apply to

- . interception of communications with the consent of one of the parties to the communication.
- . training of intelligence personnel by non-intelligence components.

Sec. 2. Definitions

The following definitions set out in Appendix A are applicable to these procedures:

- . consent
- . DoD intelligence components
- . electronic communications equipment
- . electronic surveillance
- . intelligence
- . United States person

Sec. 3. Policy

Training of DoD personnel in the operation and use of electronic communications and surveillance equipment is conducted, to the maximum extent that is practical, without interception of the communications of United States persons who have not given consent.

Sec. 4. Procedures

A. Training guidance. The training of the personnel of DoD intelligence components in the operation and use of electronic communications and surveillance equipment shall include guidance concerning the requirements and restrictions of the Foreign Intelligence Surveillance Act of 1978, ref. (h), and Executive Order 12036, ref. (f), with respect to the unauthorized acquisition and use of the content of communications of United States persons.

B. Training limitations. The use of electronic communications and surveillance equipment for training purposes is permitted subject to the following limitations:

1. To the maximum extent that is practical, use of such equipment for training purposes shall be directed against intelligence targets otherwise authorized;
2. The contents of private communications of nonconsenting United States persons may not be acquired aurally unless the person is an authorized target of electronic surveillance; and
3. The electronic surveillance will be limited in extent and duration to that necessary to train personnel in the use of the equipment.

There are two exceptions to these limitations:

4. Public broadcasts, distress signals or official United States Government communications may be monitored provided that where government agency communications are monitored, the consent of an appropriate official is obtained; and
5. Minimal acquisition of information is permitted as required for calibration purposes.

C. Storage and dissemination. Information collected during training that involves authorized intelligence targets may be stored in accordance with Procedure 2 and disseminated in accordance with Procedure 3. Information collected during training that does not involve authorized intelligence targets or that is acquired inadvertently shall be destroyed as soon as practical or upon completion of the training and may not be disseminated for any purpose. This subsection does not apply to distress signals.

Date of Attorney General approval:

Date of Secretary of Defense approval:

GA 815/79
W. Graham Clayton
30 NOV 1979

PROCEDURE 10: CONCEALED TELEVISION MONITORING
AND OTHER CONCEALED MONITORING

Sec. 1: Applicability and Scope

This procedure implements Section 2-203 of Executive Order 12036, ref. (f), and Section 102(b) of the Foreign Intelligence Surveillance Act of 1978, ref. (h). It applies to concealed television and other monitoring for foreign intelligence and counterintelligence purposes conducted by a DoD intelligence component within the United States or directed against a United States person who is outside the United States. These procedures do not apply to:

- . surveillance conducted with consent including appropriate general notices to employees;
- . television and other monitoring for law enforcement purposes, or for physical security purposes;
- . electronic surveillance for foreign intelligence and counterintelligence purposes; that is governed by Procedures 4 and 5;
- . measures conducted to determine whether electronic surveillance equipment is being used unlawfully; those measures are governed by Procedure 7;
- . physical surveillance by means other than concealed television and other concealed monitoring; that is governed by Procedure 13;
- . television monitoring outside the United States directed against a person who is not a United States person; or
- . overhead reconnaissance not directed at specific United States persons.

Sec. 2: Definitions

The definitions of the following terms, set out in Appendix A, are applicable to this procedure:

- . counterintelligence
- . DoD intelligence components
- . electronic surveillance
- . employee
- . foreign intelligence
- . intelligence
- . law enforcement
- . physical security
- . physical surveillance
- . United States
- . United States person

Concealed monitoring in this context means monitoring that is both surreptitious and continuous. Monitoring is surreptitious when it is targeted against a particular person or groups of persons and is conducted secretly for the purpose of keeping the subject of the monitoring unaware of it. Monitoring is continuous if it is conducted against targeted persons without interruption for a substantial period of time. It does not include monitoring when television cameras are within sight although placed unobtrusively. It does not include monitoring by beepers when there is a notice affixed to the item to which the beeper is attached indicating the presence of the beeper. It does not include monitoring of space not targeted at specific persons.

Other concealed monitoring in this context means monitoring by movie cameras or radiating devices and receivers known as "beepers" or other means used for concealed monitoring. It does not include binoculars, search light or still photographic devices.

Monitoring is "within the United States" if the television camera, monitoring device or the target of the monitoring is located within the United States.

Monitoring is for physical security purposes if it is used to monitor open spaces, parking lots, corridors, entrances, exits, windows; or safes, vaults, restricted access areas, or other areas used primarily for the storage of classified material.

Sec. 3. Policy

The Department of Defense normally relies on the Federal Bureau of Investigation for concealed monitoring conducted in the United States except for activities on DoD property. Use of concealed television and other similar types of monitoring within the United States by DoD intelligence components is conducted only on installations, facilities, or property of the Department of Defense or its contractors. This limitation does not apply to assistance furnished the Federal Bureau of Investigation under procedure 16 or Sec. 2-309 of Executive Order 12036.

Sec. 4. Procedures

A. Television monitoring under no expectation of privacy. Judgments about reasonable expectations of privacy should be made on a case-by-case basis and only after consultation with the General Counsel of the intelligence component, and should take into account the great importance of preserving privacy. A reasonable expectation of privacy is measured against an objective standard of what a reasonable person would expect under the circumstances. There are reasonable expectations of privacy in work spaces if a person's actions and papers are not subject to ready observation by others under normal work

circumstances. The limitations on television monitoring where there is no reasonable expectation of privacy are as follows:

- 1, A DoD intelligence component may conduct concealed television monitoring within the United States if the monitoring is conducted within a DoD installation or facility, if the person subject to monitoring does not have a reasonable expectation of privacy and if no physical trespass is used to effect the monitoring.
- 2, Television monitoring directed at a United States person may be conducted outside the United States if the person subject to the monitoring does not have a reasonable expectation of privacy and if no physical trespass is used to effect the monitoring.
- 3, Concealed television monitoring conducted under this subsection requires approval by the head of the intelligence component based on a determination that such monitoring is necessary to the conduct of assigned intelligence functions.
- 4, If physical trespass is involved to effect the monitoring, approval of the Attorney General or a warrant issued by a military judge is required.

B. Television monitoring where there is an expectation of privacy.

1. A DoD intelligence component may conduct concealed television monitoring under circumstances where the persons subjected to monitoring have a reasonable expectation of privacy if the monitoring has been approved by the DoD General Counsel or a general counsel with responsibility for an intelligence component and the necessary approvals by the Attorney General or warrants have been obtained. Warrants approving television monitoring conducted outside the United States may be issued by a military judge under the same standards as are required for electronic surveillance outside the United States (Procedure 5). Submissions to the Attorney General under this subsection shall be made by the DoD General Counsel.
2. Requests for concealed television monitoring under this subsection must be authorized by--
 - a. the Secretary of Defense, Deputy Secretary of Defense or Deputy Under Secretary of Defense (Policy);
 - b. the Secretaries and Acting Secretaries of the Military Departments;
 - c. the Director of the National Security Agency; or
 - d. the Director of the Defense Intelligence Agency.

C. Other concealed monitoring. Concealed monitoring

by means other than television cameras may be conducted in accordance with Sections 4.A. or B. Monitoring by use of

night vision devices or telescopic vision devices may be approved under Section 4.A. if these devices are not directed against building interiors in which there is a reasonable expectation of privacy.

Date of Attorney General approval:

BRC 11/20/79

Date of Secretary of Defense approval:

W. Graham Claytor Jr.

30 NOV 1979

PROCEDURE 11: PHYSICAL SEARCH

Sec. 1. Applicability and Scope

This procedure implements section 2-204 of Executive Order 12036, ref (f), and applies to physical searches of any person, or property within the United States and to physical searches of the person or property of a United States person outside the United States by DoD intelligence components for foreign intelligence or counterintelligence purposes. This procedure does not apply to:

- . physical searches authorized pursuant to the Uniform Code of Military Justice or the Manual for Courts Martial (ref. (j)), including command inspections or to other physical searches for law enforcement purposes;
- . use of electronic or mechanical devices within the United States governed by Procedures 4, 6, 7, 8, 9 and 10;
- . mail searches governed by Procedure 12; or
- . searches outside the United States involving persons who are not United States persons.
- . unconsented physical searches within the United States and within a Defense facility when there is an immediate threat to the safety of individuals or to prevent destruction or loss of government property where the cooperation of local law enforcement officials cannot be obtained in time to prevent harm to individuals or destruction of property as, for example, in response to a bomb threat where the bomb cannot be located. ,,

Sec. 2. Definitions

The definitions of the following terms, set out in Appendix A , are applicable to this procedure:

- . clandestine intelligence activity
- . consent
- . counterintelligence
- . DoD intelligence components
- . employee
- . foreign intelligence
- . foreign power
- . Intelligence Community
- . international terrorist activities
- . law enforcement
- . law enforcement authorities
- . narcotics production or trafficking
- . sabotage
- . United States
- . United States person

Physical search means any intrusion upon a person or a person's property or possessions to obtain items of property or information. The term does not include examination of areas that are in plain view and visible to the unaided eye if such areas constitute public places, and does not include abandoned property left in a public place.

Sec. 3. Policy

DoD intelligence components may not conduct unconsented physical searches within the United States. Assistance may be rendered to the Federal Bureau of Investigation in the conduct of such searches, however, in accordance with sections 2-308 and 2-309 of Executive Order 12036.

DoD intelligence components may conduct unconsented physical searches of United States persons who are outside the United States, or of property of such persons that is located outside the United States, for foreign intelligence or counterintelligence purposes, pursuant to a warrant issued

by a military judge, the approval of the Attorney General, or in emergency circumstances, pursuant to the approval of a designated senior DoD official.

Sec. 4, Procedures

A. Consented Physical Searches. A DoD intelligence component may conduct physical searches under implied or express consent as follows:

1. Express consent. A DoD intelligence component may conduct physical searches of persons or property with the express consent of the person searched or a person with authority over real or personal property. Determinations of authority shall be made by the general counsel of the DoD intelligence component concerned.
2. Entrance to or Exit from Facilities. A DoD intelligence component may conduct physical searches of persons and property as a condition of entrance to or exit from a DoD facility provided --
 - a. notices are posted publicly at the entrances to the facility indicating that consent to personal and property searches is a condition to access to the facility;
 - b. searches of a person are limited to a "pat-down" search designed to locate equipment, documents, or related espionage devices;
 - c. searches of property are limited to that in possession of a person entering or leaving the facility; and
 - d. searches of person or property are not made when the person learns of the search requirement before entering the facility and elects not to enter
3. Contents of United States Government Storage Facilities, Public Records, Lockers, Desks or Other Containers. A DoD intelligence component may search the contents of United States government storage facilities, public records, lockers,

desks and other containers on government property subject to the following limitations --

- a. The contents of Defense Department storage facilities and public records may be examined for counter-intelligence purposes, provided the official having control over such records or facilities or superior consents to such examination;
- b. Government furnished lockers, desks or other containers assigned to individual employees may not be examined without the employee's consent except by a supervisor or other person acting for such supervisor and then only to retrieve public records related to the employee's responsibilities or, in the case of the death or illness of the employee, to obtain other materials belonging to the employee for delivery to a person acting on behalf of the employee. This prohibition does not apply where employees are notified in writing that such lockers, desks, or other containers are for official use only and are to remain unlocked or if locked, duplicate keys or combinations are maintained and will be used to conduct searches.
- c. Lockers, desks or other such containers located inside a Defense facility that are not the property of the Government and that are the property of any employee or other person granted access to a Defense facility may not be examined without consent unless such furniture is being removed from the facility by the employee or other person granted access and the facility has posted notices at its entrance of the type described in subsection 4.A. 2. above. Personal property used solely in residences within a Defense Department facility may not be examined without consent.

4. Areas, Containers, Objects, Vehicles and Other Property not on or Constituting Government Property. A DoD intelligence component may not conduct physical searches of property that is not Government property or that is not located on Government property without the express written consent of a person with authority over such property. The written consent shall include a statement concerning the purpose of search, the specific places, things or vehicle(s) to be searched, the right of the individual not to consent and shall be signed by a person with authority over the property.
5. Persons Not Employees. A DoD intelligence component may not conduct physical searches of persons who are not employees of such components or persons who have not been granted access to facilities or information of such components except for counterintelligence purposes related to the protection of personnel or facilities and then only with the express written consent of the individual to be searched. The written consent shall include a statement concerning the purpose of the search, the degree to which the body of the person will be searched, the right of the individual not to consent and shall be signed by the individual to be searched.

B. Physical Searches Under Implied Consent. A DoD intelligence component may search containers entrusted to a person under circumstances where there is no expectation of privacy with respect to examination of the contents of the container by that person. These searches must be conducted with the consent of the person to whom the container has been entrusted. This search permits the examination of pouches, packages or envelopes carried by carriers if the above standard is met.

C. Unconsented Physical Searches. A DoD intelligence component may conduct physical searches for foreign intelligence and counterintelligence purposes of United States persons who are outside the United States or of property of such persons that is located outside the United States if the search is conducted pursuant to a military warrant, express approval by the Attorney General or, in emergency circumstances, approval of a senior official of the Department of Defense. Where unconsented entry into real or personal property is involved, only the minimum intrusion necessary to obtain such information shall be permitted.

1. Physical search pursuant to military warrant.

A search warrant may be issued with respect to United States persons subject to the Uniform Code of Military Justice, (10 U.S.C. §802, Art. 2(1) through (10)), by a military judge located outside the United States who is authorized by 10 U.S.C. §826 to preside at general courts-martial and who has been designated by the Secretary of Defense to exercise this authority. The warrant shall specify the person or property to be searched and shall be based on a finding that:

- a. There is probable cause to believe the United States person against whom the search is directed is --
 - (1) a person who, for or on behalf of a foreign power, is engaged in clandestine intelligence activities (including covert activities intended to affect the political or governmental process), sabotage, or international terrorist activities, or who conspires with, or knowingly aids and abets such a person engaging in such activities.
 - (2) a person who is an officer or employee of a foreign power;

- (3) a person unlawfully acting for, or pursuant to the direction of, a foreign power. The mere fact that a person's activities may benefit or further the aims of a foreign power is not enough to bring that person under this subsection (iii) absent evidence that the person is taking directions from, or acting in knowing concert with, the foreign power.
 - b. The search is necessary to obtain significant foreign intelligence or counter-intelligence;
 - c. The significant foreign intelligence or counterintelligence expected to be obtained could not be obtained by less intrusive means; and
 - d. The search is consistent with United States obligations under an applicable Status of Forces Agreement.
2. Physical search pursuant to Attorney General approval. A DoD intelligence component may conduct a physical search of a United States person who is outside the United States or of the property of a United States person that is located outside the United States if the search is approved by the Attorney General. Requests for approval will be forwarded to the Attorney General through the DoD General Counsel. Each request shall include:
- a. An identification of the person or description of the property to be searched;
 - b. A statement of facts supporting a finding that the requirements of subsections 4.C. 1. a. through c. have been met;
 - c. A description of the significant foreign intelligence or counter-intelligence expected to be obtained from the search; and

- d. A description of the extent of the search and a statement of facts supporting a finding that the search will involve the least amount of physical intrusion that will accomplish the objective sought.
3. Physical search in emergency situations. A DoD intelligence component may conduct a physical search of a United States person who is outside the United States or of the property of a United States person that is located outside the United States in emergency situations under the following limitations:
- a. Senior officials of the Department of Defense designated in Section 5.B. may authorize physical search in emergency situations when securing the prior approval of the Attorney General is not practical because --
 - (1) the time required would cause failure or substantial delay in obtaining significant foreign intelligence or counterintelligence and such failure or delay would result in substantial harm to the national security,
 - (2) a person's life or physical safety is reasonably believed to be in imminent danger, or
 - (3) there is an immediate threat of destruction of government property and local military or other appropriate law enforcement authorities cannot be notified or reach the scene in time to prevent the harm.
 - b. The senior official authorizing a physical search shall make a finding (unless a person's life is in immediate danger) that the requirements of subsection 4.C. 1. a. are met, there is no breaking or nonconsensual entry of real property and any container to be searched as in the lawful custody of the United States. This finding need not be in writing.

- c. The senior official shall notify the DoD General Counsel promptly and the Attorney General shall be notified by the DoD General Counsel as soon as possible of the nature of the search, the circumstances surrounding its authorization, and the result thereof.

d. Cooperation with physical searches by the FBI.

Employees of a DoD intelligence component may cooperate with and assist in physical searches conducted by the Federal Bureau of Investigation only as follows:

1. Foreign intelligence. When a DoD intelligence component identifies a requirement for an unconsented physical search within the United States that is related to foreign intelligence, such a requirement shall be submitted in writing to the Director of the Federal Bureau of Investigation. Employees of DoD intelligence components may not participate with the FBI in the conduct of an authorized unconsented physical search, but may be present and assist the FBI in identifying articles of interest or render technical assistance with respect to foreign intelligence collection equipment.
2. Counterintelligence. When a DoD intelligence component identifies a requirement for an unconsented physical search within the United States that is related to counterintelligence, such a requirement shall be submitted in writing to the Director of the Federal Bureau of Investigation. Employees of DoD intelligence components may not participate with the FBI in the conduct of an authorized unconsented physical search but may be present and assist the FBI in identifying articles of interest or render technical assistance with respect to the analysis and exploitation of material and equipment identified for purposes of --
 - a. protection of personnel of facilities of any agency within the Intelligence Community;
 - b. investigation or prevention of clandestine intelligence activities by foreign powers;

- c. investigation or prevention of narcotics production or trafficking; or
 - d. investigation or prevention of international terrorist activities.
3. Other. Expert personnel provided to the FBI in accordance with Procedure 21 may participate in unconsented physical searches as a part of their duties with the FBI.

E. Cooperation with physical searches by foreign officials. Employees of DoD intelligence components may not participate with foreign officials in the conduct of an unconsented physical search not conducted pursuant to these procedures but may be present and assist foreign officials in identifying articles of interest or render assistance with respect to foreign intelligence collection equipment.

Sec. 5. Authority to request physical searches

A. Requests for approval of unconsented physical searches under subsections 4.C. 1. and 2. must be authorized by:

- 1. The Secretary or the Deputy Secretary of Defense;
- 2. The Secretary or the Acting Secretary of a Military Department,
- 3. The Director of the National Security Agency; or
- 4. The Director of the Defense Intelligence Agency.

B. Authorization for physical searches under subsection 4.B. 3. may be granted by:

- 1. Any civilian Presidential appointee;
- 2. Any General or Flag officer; or
- 3. The head of a DoD intelligence component.

C. Cooperation with physical searches conducted by the FBI may be authorized by the head of any DoD intelligence component or a designee.

Date of Attorney General approval:

11/30/79 SPC

Date of Secretary of Defense approval:

W. Graham Clayton AG

30 NOV 1979

PROCEDURE 11: MAIL SEARCHES AND SURVEILLANCE

Sec. 1. Applicability and Scope

This procedure implements section 2-305 of Executive Order 12866, ref. (5). It applies to the opening of mail or examination of envelopes in United States postal channels and to the opening of mail to or from United States persons where such activity is conducted outside the United States and such mail is not in United States postal channels. This procedure does not apply to:

- opening of mail or examination of envelopes for law enforcement purposes;
- opening or examining mail with the consent of the sender or the addressee;
- activities related to the DoD Military Customs Inspection Program conducted under DoD Directive 5050.49, ref. (6); or
- opening or examining mail outside the United States to or from persons who are not United States persons.

Sec. 2. Definitions

The definitions of the following terms, set out in Appendix A, are applicable to this procedure.

- concept
- counterintelligence
- DoD intelligence components
- foreign intelligence
- intelligence
- law enforcement
- United States
- United States person

Mail within United States postal channels

includes mail originated in the United States and mail within APO or FPO channels. It also includes mail originating out-

and the United States shall be deemed to have been notified of the
and to be notified by the United States of the
necessity of action in the interest of security.

Mail cover shall be the process by which a letter is
made of any such agreement on the outside cover of any class
of mail matter as regulated by law, except that for the purpose
of delivery of mail of any character to the postal service.

Sec. 3. Policy

Mail matter shall include letters, postal certificates of mail
to or from United States citizens, and other letters, postal
certificates, and other matters of interest to or from United States
citizens except in the case of the postal service, which shall be
subject to the provisions of the postal service, and shall be
except as provided in the applicable provisions of the postal service.

Sec. 4. Provisions

1. Department of Defense shall include the provisions of
open mail matter shall be deemed to be of the same class
to a judicial warrant in accordance with applicable law. The
department for such a warrant shall be approved and submitted to
the Attorney General by the United States District Court.

B. Department of Defense intelligence components may open mail to or from United States persons that is found outside United States postal channels only pursuant to approval by the Attorney General. Requests for such approval shall be submitted to the Attorney General by the DoD General Counsel.

C. The following officials may request approval to open mail --

1. The Secretary and Deputy Secretary of Defense; and
2. The Secretaries and Acting Secretaries of the Military Departments.

D. Department of Defense intelligence components may utilize mail covers --

1. within the United States consistent with postal regulations.
2. outside the United States if consistent with applicable status of forces agreements, or where there are no such agreements, if consistent with the law of the jurisdiction where the activity takes place.

E. Department of Defense intelligence components may request postal authorities to inspect the contents of any second-, third-, or fourth-class mail within the United States and may inspect such contents outside the United States for intelligence purposes.

Date of Attorney General approval:

GBB 8/15/79

Date of Secretary of Defense approval:

W. Graham Clayton Jr.

30 NOV 1979

PROCEDURE 13: PHYSICAL SURVEILLANCE

Sec. 1. Applicability and Scope

This procedure implements section 2-206 of Executive Order 12036, ref. (f), and applies to the physical surveillance of United States persons by DoD intelligence components. This procedure does not apply to:

- . physical surveillance of persons who are not United States persons;
- . physical surveillance for law enforcement;
- . surveillance activities that use electronic or mechanical devices such as television cameras, movie cameras, beepers or telescopic microphones in circumstances in which a warrant would be required in the criminal context; those are governed by Procedures 4, 5, and 10;
- . activities involved in physical searches; those are governed by Procedure 11;
- . undisclosed participation in organizations; that is covered by Procedure 14;
- . routine surveillance of open areas, parking lots, corridors, entrance and exits, safes and vaults, restricted access areas and other areas where classified information is stored;
- . use of uniformed guards to control access to the premises or portions of the premises of DoD intelligence components; or
- . physical surveillance conducted as a part of a military training exercise where the subjects are participants in the exercise.

Sec. 2. Definitions

The definitions of the following terms, set out in Appendix A. are applicable to this procedure:

- . consent
- . contact
- . contractor
- . counterintelligence
- . counterintelligence investigations
- . DoD intelligence components
- . electronic surveillance
- . employee
- . foreign intelligence
- . foreign power
- . intelligence method
- . intelligence source
- . international terrorist activities
- . law enforcement
- . lawful investigation
- . member of a military service
- . narcotics production or trafficking
- . physical security
- . physical security investigation
- . physical surveillance
- . reasonable belief
- . United States
- . United States person

The Executive Order defines the term "physical surveillance" as an unconsented, systematic and deliberate observation of a person by any means on a continuing basis, or unconsented acquisition of a nonpublic communication by a person not a party thereto or visibly present thereat through any means not involving electronic surveillance or physical search.

- . There is a "systematic and deliberate observation" of a person when the observation is made over a period of time with the purpose of keeping a person under observation. Incidental observations made in the course of a surveillance are not included.
- . A communication is "nonpublic" when it is not a public broadcast and when it is made under circumstances in which there is a reasonable

expectation that no one will hear it other than the person or persons to whom the communication is directed.

A person is "visibly present" at a conversation if he or she is within plain sight of the person doing the communicating. If a person deliberately concealed from view overhears a conversation, that would constitute physical surveillance.

Sec. 3. Policy

DoD intelligence components do not use physical surveillance directed against a United States person unless that technique is necessary to achieve a lawful foreign intelligence or counterintelligence purpose or is a part of a lawful physical security investigation. Physical surveillance within the United States and outside DoD installations is conducted in conformity with the agreement between the Department of Defense and the Federal Bureau of Investigation dated April 5, 1979, ref. (a).

Sec. 4. Procedures

A. General Criteria for Physical Surveillance. A DoD intelligence component may direct physical surveillance only at certain categories of persons --

1. Within the United States only against --
 - . employees of the intelligence component;
 - . contractors of the intelligence component;

- . employees of such contractor; and
- . members of the military services.

Within the United States a DoD intelligence component may conduct physical surveillance only on DoD installations unless such surveillance is directed at a member of the military service or is "hot pursuit," or is otherwise undertaken consistent with ref. (a).

2, Outside the United States may be conducted against--

- . all persons under Subsection 4.A. 1.;
- . former employees of a DoD intelligence component;
- . former contractors;
- . former contractor employees;
- . civilian persons employed by a non-intelligence component of DoD; and
- . persons in contract with a present or former employee or contractor (but only to the extent necessary to identify that person).

B. Physical surveillance for positive foreign intelligence purposes. A DoD intelligence component may conduct physical surveillance:

1. Within the United States, if the surveillance meets the criteria set out in Section 4.A. and is conducted solely for the purpose of identifying a person who is in contact with someone who is the subject of a lawful foreign intelligence investigation. A person is the "subject of" a foreign intelligence investigation if foreign intelligence is sought from or about that person. The person who is the foreign intelligence target may be either a United States person or a foreigner. The information that may be collected about the foreign intelligence target's contact is limited to information necessary to identify that person, including name, address, and employment.
2. Outside the United States, if
 - a. the surveillance meets the criteria in Section 4.B. 1., or
 - b. the person surveilled is reasonably believed to be acting on behalf of a foreign power. An action is taken "on behalf of" a foreign power when it is done to further an activity, capability or intention of a foreign power.

C. Physical surveillance for counterintelligence purposes.

A DoD intelligence component may conduct physical surveillance for counterintelligence purposes if

1. The surveillance is directed at a person who is the subject of a lawful counterintelligence investigation.

A person is the "subject of" a counterintelligence investigation when the investigation has focused on that person's activities.

2. The surveillance is conducted solely for the purpose of identifying a person who is in contact with someone who is the subject of a lawful counterintelligence investigation.

The information that may be collected about the United States person who is in contact with the counterintelligence target is limited to information necessary to identify that person, including name, address, employment, and security clearance.

Physical surveillance conducted for counterintelligence purposes within the United States must also meet the criteria set out in Section 4.A.

D. Physical surveillance for protection of intelligence sources and methods. A DoD intelligence component may conduct physical surveillance for the purpose of protecting a foreign intelligence or counterintelligence source or method from unauthorized disclosure. Physical surveillance for this purpose may be conducted:

1. Within the United States, only if the surveillance meets the criteria set out in Section 4.A. and only against:
 - a. A present employee of a DoD intelligence component;

- b. A present contractor of a DoD intelligence component;
 - c. A present employee of a present contractor of a DoD intelligence component; or
 - d. A member of a military service.
2. Outside the United States, if the surveillance meets the criteria set out in Section 4-A. above and is conducted against:
- a. Any person covered by subsections 4.D. 1. a.- d. above;
 - b. A former employee of a DoD intelligence component;
 - c. A former contractor of a DoD intelligence component; or
 - d. A present or former employee of a present or former contractor of a DoD intelligence component;
 - e. A person who is in contact with someone described in subsection 4.D. 2. a., b., or c. above but only to the extent necessary to identify that person, including name, address, employment and security clearance.

E. Physical surveillance for physical security purposes.

A DoD intelligence component may conduct physical surveillance for the purpose of protecting the physical security of the installations of DoD components. The surveillance must be conducted as a part of a lawful physical security investigation and must meet the following criteria:

- 1. The surveillance is conducted against persons who are specified in Subsection 4. D. 1. and 2. above;

2. The surveillance is conducted against persons who are --
 - a. discovered on a Defense or intelligence installation without authorization;
 - b. discovered in a portion of an installation under circumstances such that there is a reasonable belief that such person is violating or is about to violate laws or regulations relating to the protection of classified information; or
 - c. reasonably believed to be engaging in activities that are directed at or will result in unauthorized entry onto or the compromise of the security of an installation.
3. Information may be collected regarding the person's --
 - a. identification;
 - b. location; and
 - c. activities, intentions, and capabilities with respect to breaching the physical security of the installations.

F. Physical surveillance of persons engaging in international terrorist activities. A DoD intelligence component may conduct physical surveillance outside the United States of a United States person who is reasonably believed to be engaged in international terrorist activities. A person is "engaged in" an activity if that person has taken some action in furtherance of the activity or is in contact with a person or organization that has taken such action under circumstances that support a reasonable belief that action by that person in furtherance of the activity will follow.

G. Physical surveillance of persons engaging in narcotics production or trafficking. A DoD intelligence component may conduct physical surveillance outside the United States of a United States person who is reasonably believed to be engaged in narcotics production or trafficking. Information collected should be limited to the person's identification; location; and activities, intentions, capabilities and associates with respect to narcotics production or trafficking.

H. Approval of physical surveillance. Physical surveillance other than for purposes of identification must be authorized by the head of the intelligence components or one of two designated senior officials. Physical surveillance for identification purposes may be authorized by a field supervisor.

Date of Attorney General approval:

GBB 8/15/79

Date of Secretary of Defense approval:

W. Graham Clayton R

30 NOV 1979

PROCEDURE 14. UNDISCLOSED PARTICIPATION
IN ORGANIZATIONS

Sec. 1. Applicability and Scope

This procedure implements Section 2-207 of Executive Order 12036, ref. (f), and applies to participation by employees of DoD intelligence components in any organization within the United States or that is primarily composed of United States persons when participation is on behalf of any entity of the intelligence community. These procedures do not apply to:

- . the undisclosed participation by DoD employees acting on behalf of Department of Defense investigative organizations when the participation is for law enforcement purposes and is conducted under the provisions of DoD Directive 5200.27, ref. (1);
- . contracting or other arrangements for goods and services; that is governed by Procedure 15; or
- . assignment of employees of DoD intelligence components to other agencies; that is governed by Procedure 18.

Undisclosed participation in organizations not affiliated with the Department of Defense by employees of DoD intelligence components is exempted from the requirements of DoD Directive 5200.27, ref. (1).

Sec. 2. Definitions and Interpretations

The definitions of the following terms, set out in Appendix A. are applicable to this procedure:

- . contact
- . counterintelligence
- . cover
- . DoD intelligence component
- . employee

- . foreign intelligence
- . foreign power
- . intelligence community
- . international terrorist activities
- . law enforcement
- . lawful investigation
- . reasonable belief
- . United States
- . United States person

Participation in this context means taking one or more of the following actions with respect to an organization -- acquiring membership, attending meetings not open to the public, contributing to the work of the organization, or providing funds to the organization other than in payment for goods or services. Participation is covered by this procedure if it occurs within the United States.

Participation is on behalf of an agency within the intelligence community when the employee has been directed to participate as a part of his or her work assignment or when any information, contacts, cover, or work product of the participation is intended for delivery to or for the benefit of such agency. Participation for personal purposes of increasing an employee's store of knowledge, personal associations or social contacts or for the benefit of an employee's extra-curricular interests is not covered by this procedure. A person will not be acting on behalf of an agency within the intelligence community if he is not paid by the agency, if he is not in any way controlled by the agency, and if he does not undertake any action that constitutes participation at the direction or request of the agency.

An organization is primarily composed of United States persons when one-half or more of the members, participants or employees of the organization are United States persons. This is a rough rule of thumb and doubts about total members or numbers of United States persons should be resolved in favor of the additional protection accorded organizations that are substantially composed of United States persons. An action is taken on behalf of a foreign power when it is done to further an activity, capability or intention of a foreign power. An organization acts only through its members, officers, employees and agents. The act of a person may be attributed to the organization when it was done at the direction of or for the benefit of the organization.

Sec. 3. Policy

Employees of Department of Defense intelligence components do not participate in organizations within the United States without disclosing their affiliation with the Department and with the intelligence component unless the participation is for personal and not official purposes or unless participation without disclosure has been approved by the Deputy Under Secretary of Defense (Policy Review).

Sec. 4. Procedures

A. Undisclosed Participation on Behalf of the FBI, The undisclosed participation of an employee of a DoD intelligence component in an organization within the United States, as part

of a lawful investigation or operation by the Federal Bureau of Investigation must be requested in writing by the FBI and approved by the Deputy Under Secretary or Defense (Policy Review).

B. Undisclosed Participation in an Organization Not Primarily Composed of United States Persons and Reasonably Believed to be Acting on Behalf of a Foreign Power. Undisclosed participation of this type shall be requested and approved in the following manner:

1. Authority to approve such participation shall be limited to the Deputy Under Secretary of Defense (Policy Review) who shall find that such non-disclosure is essential for accomplishment of a lawful purpose. Such finding shall be subject to review by the Attorney General.
2. Authority to request such participation shall be limited to the Secretaries and Under Secretaries of the Military Departments.
3. Requests for authority for such participation shall include a statement of facts sufficient to show that the organization concerned is not primarily composed of United States persons, and is reasonably believed to be acting on behalf of a foreign power. Such requests shall also show that the FBI has concurred in the participation being requested.

C. Undisclosed Participation for Limited Foreign Intelligence Purposes. Employees of DoD Intelligence components may participate in the following activities without disclosure of affiliation with an intelligence component.

1. Participation in meetings, conferences, exhibitions, trade fairs, and similar gatherings sponsored by organizations which are open to the public and which are designed to enhance the skills, knowledge or capabilities of the employee.

2. Participation in technical or professional seminars, associations, conferences, workshops, symposiums and other meetings sponsored by technical organizations although such education and training could be applied to foreign intelligence uses
3. Membership in an organization solely for the purpose of establishing professional or educational credentials.
4. Employees who participate in the activities of an organization under subsection 1., 2. or 3. above may, if requested, identify themselves as Department of Defense employees, or members of a military service or command, without specifying their intelligence affiliation.

D. Participation in Organizations Where Non-Disclosure of Affiliation is Essential to Achieving Lawful Purposes.

Undisclosed participation under this subsection shall be approved as follows:

1. Authority to approve such participation shall be limited to the Deputy Under Secretary of Defense (Policy Review) who shall find that such non-disclosure is essential for accomplishment of a lawful purpose. Such finding shall be subject to review by the Attorney General.
2. Authority to request such participation shall be limited to the Secretaries and Under Secretaries of the Military Departments, and the heads of DoD intelligence components.
3. Requests for approval of such participation shall include a statement of facts sufficient to show that such participation is essential to a lawful foreign intelligence purpose. "Lawful foreign intelligence purposes" are limited to --
 - a. Participation to establish contact with a potential source of foreign intelligence or a potential source of assistance in foreign intelligence activities;

- b. Participation to establish contact with someone who is a target of foreign intelligence;
 - c. Participation outside the United States to collect foreign intelligence, but not to acquire information concerning the organization in which the individual is participating;
 - d. Participation within the United States to collect foreign intelligence from cooperating sources, otherwise unobtainable, where such sources would be lost if disclosure of the relationship with the intelligence component were made, provided that such participation has been approved by the Special Coordination Committee of the National Security Council, and the organization is primarily composed of persons subject to the Uniform Code of Military Justice, 10 U.S.C. § 802, Art. 2(1) through (10), ref. (g); or
 - e. Participation to establish cover necessary to protect the security of foreign intelligence.
 - f. Participation in organizations which permit government employees to so participate in their official capacity.
- 4. Participation may not be undertaken for the purpose of influencing the activity of the organization or its members.
 - 5. Approval under these procedures shall specify the duration of participation (not to exceed 12 months) and include provisions to ensure that the participation is limited to approved purpose.

E. Disclosure of Participation. Unless nondisclosure is

approved under this procedure, all participation in organizations by employees of DoD intelligence components on behalf of such components shall be disclosed to an executive officer of the organization or to the official in charge of membership, attendance, or the records of the organization, if disclosure of affiliation is normally required of all members or participants in such organization.

Date of Attorney General approval:

Date of Secretary of Defense approval:

GFB 811579
W. Graham Clayton

30 NOV 1979

PROCEDURE 15. CONTRACTING FOR GOODS AND SERVICES

Sec. 1. Applicability and Scope

This procedure implements Section 2-303 of Executive Order 12036, ref. (f), and applies to contracting or other arrangements for the procurement of goods and services by DoD intelligence components within the United States. This procedure applies to contracting with or procurement from corporations, other commercial organizations, academic institutions and other private institutions or individuals. This procedure does not apply to:

- . contracting outside the United States even if the contractor is a United States person and the goods and services are to be delivered wholly or in part within the United States; or
- . contracting with government entities.

Sec. 2. Definitions

The definitions of the following terms, set out in Appendix A, are relevant to this procedure:

- . available publicity
- . contractor
- . commercial organization
- . corporation
- . cover
- . DoD intelligence components
- . intelligence
- . intelligence method
- . intelligence source
- . intelligence community
- . United States
- . United States person

A United States academic institution, in this context, is an institution that is a United States person and that is operated or holds itself out as a degree-granting institution. Both public and private academic institutions are treated the same for this purpose.

The term "private institution" includes associations, organizations and other entities that have no government affiliation and that are not corporations, commercial organizations, or academic institutions.

A contract is with an individual rather than the organization with which the individual is affiliated when it is in writing, only the name of the individual appears as a contracting party, and no part of the consideration is specified in the contract as payable to the organization.

Contracting "by or for" a DoD intelligence component includes placing with or accepting from other agencies within the Intelligence Community requests to procure goods and services from corporations, commercial organizations, and private institutions in order to protect from disclosure sensitive intelligence activities, facilities, or relationships.

Contracting or other procurement arrangements are "within the United States" when the contract is entered at a place within the United States. The contract may recite that it was entered within the United States and that will be dispositive for purpose of this procedure.

Sec. 3. Policy

The Department of Defense discloses the maximum amount of information about the sponsorship of contracts made within the United States to obtain goods and services that is consistent with the need for protection of intelligence activities or intelligence sources and methods from disclosure.

Sec. 4: Procedures

A. Academic institutions. Contracting by or for DoD intelligence components with United States academic institutions may be done only in compliance with the following requirements:

1. No DoD intelligence component may enter a contract for goods or services with an academic institution unless, prior to the making of the contract, the intelligence component has disclosed to appropriate officials of the academic institution the fact of sponsorship by a DoD intelligence component.
2. No DoD component may enter a contract with an academic institution for the provision of goods and services to be used primarily by or for the principal benefit of a DoD intelligence component unless prior to the making of the contract, the DoD component has disclosed to appropriate officials the fact of sponsorship by a DoD intelligence component.
3. Disclosure is adequate if --
 - a. the name of the DoD intelligence component appears on the face of the contract as a contracting party or as a component authorized to take delivery of goods or services under the contract;
 - b. there is appended to the contract a classified annex stating that the goods or services to be delivered under the contract are for the use of a DoD intelligence component; or
 - c. the contracting officer or other appropriate officer of the academic institution is informed orally of sponsorship of a DoD intelligence component and a written memorandum describing the information given to the officer and the time and place of the oral communication is made a part of the contract files of the DoD intelligence component.

Under subsections 4.A. 3. b., and c. above, disclosure need not include the identity of the specific DoD intelligence component that will receive the goods or services.

B. Commercial organizations and private institutions.

Contracting by or for a DoD intelligence component with corporations, commercial organizations or private institutions may be done only if at least one of the following criteria is met:

1. There has been disclosure, prior to the making of the contract, of the fact of sponsorship by a DoD intelligence component. Disclosure is adequate if one of the criteria of subsection 4.A. 3. is met.
2. The contract is for written material that is available publicly, such as books, magazines, and journals available to the general public, routine goods or services for office use such as telephone, heat and light; and office equipment and supplies available to the general public such as typewriters, furniture, data processing equipment, interior or exterior maintenance services; and routine supplies or services for vehicle operation and maintenance.
3. The contract is for routine goods and services such as credit cards, car rentals, travel, lodging, meals and other items incident to approved intelligence activities.
4. There is written determination by the Secretary or the Under Secretary of a Military Department, the Director of the National Security Agency, the Director of the Defense Intelligence Agency, or the Assistant Secretary of Defense (Communications, Command, Control and Intelligence) that the sponsorship of a DoD intelligence component needs to be concealed. That determination must be supported by findings that--

- a. concealment is necessary to maintain cover or proprietary arrangements
- b. the cover or proprietary arrangements to be maintained are essential to the intelligence activities of a DoD component, and
- c. the activities of the DoD component for which cover or proprietary arrangements are used are authorized intelligence activities.

Determinations may be made for categories of contracts.

C. Individuals. Contracting by or for a DoD intelligence component with an individual person may be done only if there has been oral or written disclosure of the sponsorship by the intelligence component or a determination under subsection 4.B. 4. has been made.

D. No contract shall be void or voidable for failure to comply with this procedure.

Date of Attorney General approval:

GBB 8/15/79

Date of Secretary of Defense approval:

W. Graham Clayton Jr.

30 SEP 1979

PROCEDURE 16. PROVISION OF ASSISTANCE BY EXPERT
PERSONNEL TO LAW ENFORCEMENT AUTHORITIES

Sec. 1. Applicability and Scope

This procedure implements Sections 2-309(c) of Executive Order 12036, ref. (f), and applies to the provision of assistance by expert personnel from DoD intelligence components to law enforcement authorities within the United States. These procedures do not apply to:

- . employees of DoD intelligence components who are assigned law enforcement duties when carrying out such duties; or
- . activities of intelligence components outside the United States

Sec. 2: Definitions

The definitions of the following terms, set out in Appendix A, are applicable to these procedures.

- . DoD intelligence components
- . employee
- . expert personnel
- . law enforcement
- . law enforcement activities
- . law enforcement authorities
- . state
- . United States

Sec. 3. Policy

DoD intelligence components may provide expert personnel to assist law enforcement authorities in other departments or agencies

of the United States Government, or, if lives are endangered, such assistance may be provided state and local law enforcement authorities. Such support shall be limited to those persons with particular skills which are otherwise not readily available to such authorities but are necessary for performing a law enforcement function.

Sec. 4. Procedures

A. Provision of Expert Personnel to Federal Law Enforcement Authorities. Provision of expert personnel to any federal law enforcement agency may be made only pursuant to a request from the head of such agency. The participation of a DoD intelligence component in response to such a request shall be limited in the following respects:

1. The only personnel to be provided are experts who can assist in specialized technical, systems or logistics assignments;
2. The assignment of expert personnel to a federal law enforcement agency is accomplished in compliance with the requirements of DoD Directive 1000.17, ref. (m), and Procedure 14;
3. Such personnel are not used by the requesting federal law enforcement agency to participate actively in or direct the apprehension of persons violating the criminal laws of the United States;
4. The requirements of the Posse Comitatus Act, ref. (n), are met;
5. No assignment exceeds 90 days without the written approval of the Secretary of Defense or a designee; and

6. The requesting federal law enforcement agency does not assign such personnel to duties other than those set out in the memorandum required by Section D(6)(c)(1) of DoD Directive 1000.17, ref. (m).

B. Provision of Expert Personnel to State and Local Law Enforcement Authorities. Expert personnel may be provided by DoD intelligence components to state and local law enforcement authorities only when lives are endangered and only pursuant to a request by the head of such authority. Under these circumstances expert personnel may be provided to such agency provided participation in law enforcement activities is limited as follows:

1. Only personnel with technical skills not readily available to such law enforcement authorities which can be utilized to prevent death or serious injury may be provided;
2. Provision of such personnel will be limited to that necessary to prevent the death or serious injury that is threatened, but in no case shall such assistance be provided for more than 72 hours;
3. Such personnel are not used to apprehend persons who are suspected of committing, or who are about to commit, a crime; or
4. Use of such personnel does not violate the Posse Comitatus Act, ref. (n).

C. Emergency Assistance. In emergency situations, where life is endangered, the request required in subsection A or B of this section may be oral, provided that it is reduced

to writing and submitted in accordance with this section within 72 hours. Where life is endangered, doubt as to the legality and propriety of the requested assistance under this procedure should be resolved in favor of providing the assistance.

D. Notice of Assistance. Notice of the provision of expert personnel to law enforcement authorities pursuant to this procedure shall be given to the General Counsel, Department of Defense, within five days after such assistance has been provided.

Date of Attorney General approval:

GBA 8/15/79

Date of Secretary of Defense approval:

W. Graham Claytor Jr.

30 NOV 1979

PROCEDURE 17. ASSIGNMENT OF INTELLIGENCE
PERSONNEL TO OTHER AGENCIES

Sec. 1. Applicability and Scope

This procedure implements section 2-304 of Executive Order 12036, ref. (f), and applies to the assignment of Department of Defense intelligence personnel to other agencies within the federal government. This procedure does not apply to:

- . assignment to state or local governments, corporations or other private organizations.
- . assignment to another agency within the intelligence community when part of the purpose of the assignment is to gain experience and knowledge about the activities of the other agency.

Sec. 2. Definitions

The definitions of the following terms, set out in Appendix A, are applicable to this procedure:

- . available publicly
- . corporation
- . DoD intelligence component
- . employee
- . intelligence community
- . state

Reporting or report in this context means transmission of information about the operation or personnel of an agency that is not available publicly.

Sec. 3. Policy

Employees of DoD intelligence components who are assigned to work for and under the direction of another agency of the federal government will conduct themselves for the duration of

their assignment as if they were employees of that agency. Any responsibilities to provide information to or services for the Department of Defense will be stated expressly and made a part of the terms of the assignment.

Sec. 4. Procedures

A. Assignment of employees of DoD intelligence components to other agencies within the federal government is governed by DoD Directive 1000.17, ref. (m). The memorandum of agreement concerning such assignment and required by subsection D(6)(c)(1) of the Directive shall include:

1. An identification of the DoD intelligence component from which the employee has been assigned by the Department of Defense; and
2. A statement delineating the employee's responsibilities, if any, for reporting to the Department of Defense about matters that come to the employee's attention while on assignment outside the Department.

B. Other than is permitted by the terms of the memorandum of agreement pursuant to DoD Directive 1000.17, ref. (m), an employee of a DoD intelligence component on assignment to another agency of the federal government may not report to any DoD component on the operations or personnel of the agency to which the employee is assigned.

C. After completion of an assignment to another agency of the federal government and return to the Department of Defense, an employee remains under the same restrictions as to reporting that applied when he or she was on such assignment.

Date of Secretary of Defense approval: W. Graham Clayton

30 " 1979

EXHIBIT 12

Section 1. The following is a list of the

names of the persons who have been
 appointed to the various positions
 of the Board of Directors of the
 Corporation, and the names of the
 persons who have been appointed to
 the various positions of the

Section 2. The following is a list of the

names of the persons who have been

appointed to the various positions of the

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Section 3. The following is a list of the

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Section 4. The following is a list of the

names of the persons who have been

appointed to the various positions of the

names of the persons who have been

appointed to the various positions of the

Human subjects in this context includes any person regardless of whether the person qualifies as a United States person.

Sec. 3. Policy

DoD intelligence components conduct experimentation on human subjects only when an important foreign intelligence or counterintelligence purpose is to be served, only after the informed consent of the subject has been obtained in writing, and only in accordance with guidelines issued by the Department of Health, Education & Welfare setting out conditions that safeguard the welfare of the subjects, and other applicable regulation.

Sec. 4. Procedure

DoD intelligence components may not engage in or contract for experimentation on human subjects without approval of the Secretary or Deputy Secretary of Defense, or the Secretary or Under Secretary of the Military Department.

Date of Secretary of Defense approval: W. Graham Claytor Jr.
30 Nov 1979

PROCEDURE 19. SPECIAL ACTIVITIES

Sec. 1. Applicability and Scope

This procedure implements Sections 2-305 and 2-306 of Executive Order 12036, ref. (f), and applies to the conduct and support of special activities by DoD intelligence components. This procedure also applies to other DoD components that provide support for special activities conducted by DoD intelligence components and other agencies within the Intelligence Community. These procedures do not apply to:

- . diplomatic or military attache activities conducted by the Department of Defense;
- . the collection and production of intelligence;
- . any functions in support of the collection and production of intelligence; or
- . the conduct of special activities by the military services in armed conflict or to military deception operations targeted, for military purposes, against a hostile foreign power.

Sec. 2. Definitions

The definitions of the following terms, set out in Appendix A, are applicable to this procedure:

- . DoD intelligence components
- . expert personnel
- . foreign power
- . intelligence
- . Intelligence Community
- . intelligence product
- . international terrorist activities
- . United States

Conspiracy in this context has the same meaning as in the criminal law context and requires an overt act. Neither the term "assassination" nor the term "conspire" include

military or civilian measures against ongoing international terrorist activities (which is a defined term and should be construed strictly), aircraft hijackings, or in response to danger of substantial physical harm to any person. These terms do not apply to actions of the military services in the execution of lawfully ordered military operations.

Diplomatic and military attache activities means the representational, information gathering, and reporting activities performed by diplomatic and military attache personnel abroad.

Production of intelligence means the process of developing "intelligence products" which is a defined term.

Special activities means activities conducted abroad in support of national foreign policy objectives which are designed to further official United States programs and policies abroad and which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly and functions in support of such activities, but not including diplomatic and military attache activities or the collection and production of intelligence or related support functions.

Support, when used in this context, means the provision of assistance in the form of transportation, training, supplies, equipment or expert personnel.

Sec. 3. Policy

No DoD intelligence components shall participate in the conduct or support of special activities and no other DoD

component shall provide support for special activities except upon the specific direction of the Secretary or Deputy Secretary of Defense. Any participation of a DoD intelligence component in special activities requires prior Presidential approval. Such participation may only take place outside the United States. In peacetime, support for special activities, provided by DoD components within the United States, also requires prior Presidential approval. Under no circumstances shall any person employed by or acting on behalf of the Department of Defense engage in or conspire to engage in assassination.

Sec. 4. Procedures

Any DoD intelligence or other component that receives a request to participate in the conduct or support of special activities shall promptly forward such request to the Secretary of Defense and shall not respond to such request in any manner without prior specific direction from the Secretary or Deputy Secretary of Defense.

Date of Secretary of Defense approval: W. Graham Clayton Jr

30 NOV 1979

PROCEDURE 20. GUIDELINES GOVERNING
EMPLOYEE CONDUCT

Sec. 1. Applicability and Scope

This procedure implements Section 1-704 of Executive Order 12036, ref. (f). It sets out the policies and guidelines governing the conduct of employees of DoD intelligence components and provides for the imposition of sanctions against such employees for failure to meet those standards. It also sets out the means by which senior officials within DoD intelligence components ensure that these policies and guidelines are made known to each employee of the component. Senior officials of DoD intelligence components may choose to take additional actions to carry out Section 1-704 but no such additional actions are required.

Sec. 2. Definitions

The following terms, set out in Appendix A, are applicable to this procedure:

- . DoD intelligence components
- . employee
- . intelligence
- . United States
- . United States person

Sec. 3. Policy

Employees of DoD intelligence components conduct intelligence activities only pursuant to and in accordance with Executive Order 12036, ref. (f), and this Directive. In conducting intelligence activities, employees of DoD intelligence components take into account the paramount importance

of the protection of the constitutional rights and privacy of the American people. Employees of DoD intelligence components who have professional responsibilities for intelligence programs are required to be familiar with applicable portions of Executive Order 12036, this Directive, and any implementing procedures promulgated pursuant to this Directive. Questions of propriety or legality are referred to the General Counsel or Inspector General of the component concerned. Appropriate sanctions are imposed against employees who do not adhere to the standard restrictions or prohibitions set for the conduct of intelligence activities.

Sec. 4. Procedures

A. Familiarity with Restrictions and Requirements.

1. Each DoD intelligence component shall prepare an extract of Section 2 of Executive Order 12036, ref. (f), that contains the provisions relevant to the operations of that component. If certain techniques or activities described in Section 2 may not be used or engaged in by employees of that component, the extract shall so note in place of the text.

For example, in a component that is not permitted to do physical searches, the extract would be as follows:

" 2-204. Physical searches

NOT PERMITTED
or, if applicable,
NOT PERMITTED
IN THE UNITED STATES"

The extract shall have the following introductory paragraph:

"Intelligence activities within the Department of Defense must be conducted with scrupulous care to meet the requirements of Executive Order 12036. Employees of DoD intelligence components must understand the requirements of the Executive Order and must take the responsibility upon themselves to raise with a lawyer designated by the (insert General Counsel's office) questions they may have about how the Executive Order applies to their particular responsibilities within the intelligence component."

Additional introductory or explanatory material may be added.

Any comparable document or documents may be used by a General Counsel for this purpose.

2. Each DoD intelligence component shall distribute the extract described in Section 1 to each new employee who arrives after the effective date of this procedure.
3. The General Counsel with responsibility for each DoD intelligence component shall prepare an extract of the procedures contained in this regulation that govern the operations of that component together with the designations of approving authority that apply to that component. If certain techniques or activities may not be used or engaged in by employees of that component, the extract shall so note in place of the text.

For example, in a component that is not permitted to do physical searches, the extract would be as follows:

Procedure 11. Physical Searches
NOT PERMITTED
or, if applicable,
NOT PERMITTED
IN THE UNITED STATES

The extract shall have the following introductory paragraph:

"Intelligence activities within the Department of Defense are governed by DoD Directive 5240.XX. Senior employees must be familiar with the portions of this Directive that are applicable to the activities of (insert) intelligence component. If you have questions about how the provisions of this Directive are applicable to the particular activities for which you have supervisory responsibility, please raise those questions promptly with a lawyer designated by the (insert General Counsel's office)."

Additional introductory or explanatory material may be added.

General Counsels may prepare separate extracts for different elements of an intelligence component if that is useful.

Any comparable document or documents may be used by a General Counsel for this purpose.

Each intelligence component shall distribute the extract described in section e to each general/flag officer, member of the Senior Executive Service and employee in the grade of GS-16 or above, with supervisory responsibility for the intelligence activities of such component.

B. Employee conduct

1. Each general/flag officer, member of the Senior Executive Service and employee in the grade of GS-16 or above with supervisory responsibility for intelligence activities shall include in their duties the responsibility for verifying that the requirements imposed by this Directive are met before activities supervised by them are undertaken.
2. Employees with operating responsibility for intelligence activities shall include in their duties responsibility for verifying that their personal actions meet the requirements imposed by this Directive. It is not intended that clerical, secretarial, custodial, administrative or other support staff personnel are included under this subsection.
3. Employees with record-keeping responsibilities shall pay particular attention to records

with respect to United States persons and shall act with caution to assure that the restrictions with respect to storage and dissemination of such information are met.

4. In all intelligence activities, DoD employees shall respect the privacy rights of United States persons as defined in this Directive.
5. Each employee shall report promptly to the General Counsel or Inspector General with responsibility for the intelligence component where the employee is employed, or to the DoD General Counsel or Inspector General for Defense Intelligence any activity by any person that violates this Directive. Such reports may be written or oral. Such reports shall be held in confidence if the employee desires.

C. Sanctions

Any existing administrative sanction may be imposed for failure to meet the requirements of this Directive. This Directive does not create any new administrative sanction.

Date of approval by the Secretary of Defense.

W. Graham Clayton
30 Nov 1979

PROCEDURE 21. MEANS TO IDENTIFY,
INSPECT, INVESTIGATE, AND REPORT ON
UNLAWFUL OR IMPROPER ACTIVITY

Sec. 1. Applicability and Scope

This procedure implements Sections 1-705 and 3-204 of Executive Order 12036, ref. (f). It provides for the discovery and reporting within the Department of Defense and to the Intelligence Oversight Board of activities that raise questions of legality or propriety. Senior officials of DoD intelligence components may choose to take additional actions to carry out Section 1-705 but no such additional actions are required.

Sec. 2. Definitions

The definitions of the following terms, set out in Appendix A, are applicable to this procedure:

- . DoD intelligence components
- . employee
- . intelligence

The term "unlawful or improper activity," as used in this context, means conduct proscribed by this Directive.

Sec. 3. Policy

The general counsels and inspectors general with responsibilities for DoD intelligence components are the focal points for implementing means to identify, inspect, and report on unlawful or improper activity. Any violation of this Directive shall be reported promptly, investigated thoroughly and corrected.

Sec. 4. ProceduresA. Identifying Unlawful or Improper Activity

1. General counsels shall make a thorough review of the facts when rendering a legal opinion so that the possibility of unlawful or improper activity can be explored fully. Employees of intelligence components shall make available any information requested by a general counsel for this purpose.
2. Inspectors general shall establish procedures for inspecting elements of DoD intelligence components and shall also use surprise inspections where deemed useful. Employees of intelligence components shall make available any information requested by an inspector general for this purpose, as provided in DoD Directive 5100.82, ref. (o).
3. All general/flag officers, members of the Senior Executive Service and employees in the grade of GS-16 or above who have supervisory responsibilities over DoD intelligence components shall review activities under their supervision as necessary to identify unlawful or improper activity.
4. New programs shall be reviewed by the general counsel for compliance with this Directive. This does not include incremental portions of ongoing programs or continuing aspects of programs already reviewed for compliance with this Directive.

B. Investigating Instances of Suspected Unlawful or Improper Activity

1. Each instance of suspected unlawful or improper activity reported to the general counsel or inspector general with responsibility for an intelligence component shall be investigated to the extent necessary to determine the facts and to assess whether there has been a violation of this Directive.
2. Activities reported to the component general counsel may be referred to the corresponding inspector general for investigation. Activities reported to the DoD General Counsel or the Inspector General for Defense Intelligence may

be referred, after consultation between these officials, to the General Counsel or Inspector General with responsibility for the intelligence component for investigation.

3. Investigations under this subsection take priority over other work. The General Counsels or Inspectors General with responsibility for making these investigations may obtain detailees from other elements within the intelligence component, or with the concurrence of the Inspector General for Defense Intelligence, from other DoD components when necessary to complete investigations under this subsection in a timely manner.

C. Reporting on Unlawful or Improper Activity

1. Each General Counsel or Inspector General with responsibilities for a DoD intelligence component shall make a quarterly report to the Inspector General for Defense Intelligence stating the significant oversight activities undertaken during the quarter, identifying any unlawful or improper activities that may have come to their attention, and making suggestions for improvements of the oversight system. The General Counsel and Inspector General may submit separate, joint, or consolidated reports.
2. The Executive Order also requires that each General Counsel and Inspector General with responsibility for an intelligence component transmit timely reports to the Intelligence Oversight Board concerning intelligence activities that come to their attention which raise questions of legality or propriety. This reporting requirement shall be handled administratively as follows:
 - a. In accordance with subsection C.1., above, reports of routine activities shall be submitted on a quarterly basis by the General Counsels and Inspectors General with responsibility for intelligence components to the Inspector General for Defense Intelligence. These should include reports of inadvertent, unintended or minor violations of E. O. 12036, ref. (f), or this Directive. The Inspector General for Defense Intelligence

and the DoD General Counsel will make timely reports to the Intelligence Oversight Board covering all DoD intelligence components.

- b. In unusual circumstances, where violations occur that are not inadvertent, unintended or minor, there may be a need to contact the Intelligence Oversight Board directly. Telephone contact should be made with the Inspector General for Defense Intelligence as promptly as possible.
- c. Matters that come to the attention of a General Counsel in the form of a request for advice before an intelligence activity is undertaken need not be reported under this section unless the advice is that the activity may not be undertaken and that advice is disregarded by the intelligence component. This requirement goes only to the reporting of intelligence activities. It does not require reporting or disclosure of legal opinions.

Date of approval by the Secretary of Defense: W. Graham Claytor Jr.
30 Nov 1979

APPENDIX A
DEFINITIONS

1. Administrative purposes. Information is stored for "administrative purposes" when it is retained solely because it relates to one or more of the following: Contracting, building maintenance, construction, fiscal matters, internal accounting procedures, disciplinary matters, public affairs, legislative affairs, and other matters not related to intelligence or security.

2. Agent of a foreign power, means --

- a. any person other than a United States person, who --
 - (1) acts in the United States as an officer or employee of a foreign power, or as a member of group engaged in international terrorism or activities in preparation therefor;
 - (2) acts for or on behalf of a foreign power which engages in clandestine intelligence activities in the United States contrary to the interests of the United States, when the circumstances of such person's presence in the United States indicate that such person may engage in such activities in the United States, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities; or
- b. any person who --
 - (1) knowingly engages in clandestine intelligence gathering activities for or on behalf of a foreign power, which activities involve or may involve a violation of the criminal statutes of the United States;
 - (2) pursuant to the direction of an intelligence service or network of a foreign power, knowingly engages in any other clandestine intelligence activities for or on behalf of such foreign power, which activities involve or are about to involve a violation of the criminal statutes of the United States;

- (3) knowingly engages in sabotage or international terrorism, or activities that are in preparation therefore, for or on behalf of a foreign power; or
- (4) knowingly aids or abets any person in the conduct of activities described in subparagraph (a), (b) or (c) or knowingly conspires with any person to engage in activities described in subparagraphs (a), (b), or (c).

3. Available publicly means information that has been published or broadcast for general public consumption, is available on request to a member of the general public, could lawfully be seen or heard by any casual observer, or is made available at a meeting open to the general public. In this context, the "general public" also means general availability to persons in a military community even though the military community is not open to the civilian general public.

4. Clandestine intelligence activity means an activity conducted for intelligence purposes or for the purpose of affecting political or governmental processes by or on behalf of a foreign power in a manner designed to conceal from the United States Government the nature or fact of such activity or the role of such foreign power, and any activity conducted in support of such activity.

5. Collecting agency means, with respect to information, the department or agency that collects the information.

6. Commercial organization means an organization that is not incorporated and that operates or holds itself out as a business enterprise usually, but not necessarily, for the purpose of making a profit. This term covers business partnerships, companies, associations, and sole proprietorships. Organizations that use the word "Co.," and other common commercial designations may be treated as commercial organizations for purposes of these procedures. Some charitable, literary, and social organizations conduct incidental operations for profit. Not every activity designed to make a profit will qualify an entity as a commercial organization. Nor will any incidental charitable, literary or social activity remove an organization from that category of commercial organization. The determination is made by assessing the nature of the organization.

7. Communications security means protective measures taken to deny unauthorized persons information derived from telecommunications of the United States Government related to national security and to ensure the authenticity of such telecommunications.

8. Consent is the agreement by a person or organization to permit DoD intelligence components to take particular actions that affect the person or organization. Consent may be oral or written unless a specific form of consent is required by a particular procedure. Consent may be implied if adequate notice is provided that a particular action (such as entering a building) carries with it the presumption of consent to an accompanying action (such as search of briefcases),

9. Contact. Several sections in the procedures permit collection of information about a United States person who is in "contact" with someone else. Contact in this context means a reasonable belief that there has been direct communication between two persons. "Reasonable belief" should be determined in accordance with guidance under the definition of that term in this enclosure.

10. Contractor means a person or organization that provides goods or services directly to a DoD intelligence component. A person or organization is a contractor of a DoD intelligence component if the work done by the contractor is under the direction of or solely for the use of a DoD intelligence component regardless of the source of funds for payment to the contractor.

11. Corporation means an organization incorporated in the United States under federal, state or local law. The fact and place of incorporation is determinative. Entirely foreign ownership does not disqualify an organization for treatment as a corporation under these procedures. Use of the words "Inc.," or "Corp.," in the title of an organization is sufficient for it to be treated as a corporation for purposes of these procedures.

12. Counterintelligence means information gathered and activities conducted to protect against espionage and other clandestine intelligence activities, sabotage, international terrorist activities or assassinations conducted for or on behalf of foreign powers, organizations or persons, but not including personnel, physical, document, or communications security programs.

13. Counterintelligence investigation includes inquiries and other activities undertaken to determine whether a particular U.S. person is acting for, or on behalf of, a foreign power for purposes of conducting espionage and other clandestine intelligence activities, sabotage, international terrorist activities

or assassinations and to neutralize such acts. A counter-intelligence investigation, for purposes of these procedures, does not include counterespionage operations undertaken against foreign powers.

14. Cover means an arrangement to conceal the true identity of persons acting for or on behalf of an entity of the intelligence community, or the relationship of such persons to such entities.

15. DoD intelligence components include the following organizations:

- a. The National Security Agency/Central Security Service;
- b. The Defense Intelligence Agency;
- c. The offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;
- d. The Assistant Chief of Staff for Intelligence, Army General Staff;
- e. The Office of Naval Intelligence;
- f. The Assistant Chief of Staff for Intelligence, Air Staff;
- g. The Army Intelligence and Security Command;
- h. The Naval Intelligence Command;
- i. The Air Force Intelligence Service;
- j. The counterintelligence elements of the Naval Investigative Service;
- k. The counterintelligence elements of the Air Force Office of Special Investigations;
- l. The 650th Military Intelligence Group, SHAPE; and
- m. The intelligence units of the Military Departments that support Unified or Specified Commands.

16. Electronic surveillance means acquisition of a non-public communication by electronic means without the consent of a person who is a party to an electronic communication or, in the case of a nonelectronic communication, without the consent of a person who is visibly present at the place of communication, but not including the use of radio direction finding equipment solely to determine the location of a transmitter or the use of pen register equipment.

17. Electronic communications equipment means electronic equipment capable of undetected interception of electronic or oral communications. It does not include equipment designed for use only in the transmission of communications. It does not include equipment designed to determine the direction and location of radio transmitters such as radio direction-finding equipment.

18. Employee means a person employed by, assigned to, or acting for an agency within the Intelligence Community. It includes military personnel assigned to an intelligence component. It includes persons on leave status or other arrangement for absence from duties except permanent severance. It includes persons who are consultants, members of an advisory board, employees of a nonappropriated fund activity associated with a Defense intelligence agency, employees of an agency credit union, or commercial enterprise located within agency premises, or gratuitous servants assigned to duty with the DoD intelligence component. See DoD Directive 5200.25 and 5210.26.

19. Expert personnel means persons who are employees of a DoD intelligence component and who possess a specialized technical knowledge or skill.

20. Foreign intelligence means information relating to the capabilities, intentions, and activities of foreign powers, organizations or persons, but not including counterintelligence except for information on international terrorist activities.

21. Foreign power means any foreign government (regardless of whether recognized by the United States), foreign-based political party (or faction thereof), foreign military force, foreign-based terrorist group, or any organization composed, in major part, of any such entity or entities.

22. Intelligence means foreign intelligence and counterintelligence.

23. Intelligence Community and agency or agencies within the Intelligence Community refer to the following organizations:

- a. The Central Intelligence Agency (CIA);
- b. The National Security Agency (NSA);
- c. The Defense Intelligence Agency (DIA);
- d. The Offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;

- e. The Bureau of Intelligence and Research of the Department of State;
- f. The intelligence elements of the military services, the Federal Bureau of Investigation (FBI), the Department of the Treasury, the Department of Energy; and the Drug Enforcement Administration (DEA); and
- g. The staff elements of the Office of the Director of Central Intelligence.

24. Intelligence method means any process, mode of analysis, means of gathering data, or processing system or equipment used to produce intelligence.

25. Intelligence product means the estimates, memoranda and other reports produced from the analysis of available information.

26. Intelligence source means a person or technical means that provides intelligence.

27. International terrorist activities means any activity or activities which:

- a. involve killing, causing serious bodily harm, kidnapping or violent destruction of property, or an attempt or credible threat to commit such acts; and
- b. appear intended to endanger a protectee of the Secret Service or the Department of State or to further political, social or economic goals by intimidating or coercing a civilian population or any segment thereof, influencing the policy of a government or international organization by intimidation or coercion, or obtaining widespread publicity for a group or its cause; and
- c. transcend national boundaries in terms of the means by which it is accomplished, the civilian population, government, or international organization it appears intended to coerce or intimidate, or the locale in which its perpetrators operate or seek asylum.

28. Law enforcement means detecting violations of criminal law and identifying or apprehending persons who have violated the criminal law so that they may be prosecuted for other crimes. In this context the criminal law includes federal statutes, federal regulations and the Uniform Code of Military Justice.

29. Law enforcement activities means the activities undertaken in order to detect violations of law or to locate and apprehend persons who violate the law. These include activities to enforce the Uniform Code of Military Justice. Some DoD intelligence components carry out both law enforcement and intelligence functions. The same personnel may be used to carry out both functions. They are engaged in law enforcement activities when the purpose of the activity is detecting violations of criminal law and identifying or apprehending persons who have violated the criminal law. They are engaged in intelligence activities when the purpose of the activity is to obtain or produce foreign intelligence or counterintelligence. There is one exception to this distinction between the two functions. Espionage investigations could be seen as serving both law enforcement and counterintelligence purposes. But for purposes of these procedures, all espionage investigations, even if undertaken under circumstances where criminal prosecution is a possible outcome, which constitute part of the foreign counterintelligence program of the Department of Defense, shall be considered as counterintelligence activities and not law enforcement activities. Some activities of DoD intelligence components undertaken in order to collect foreign intelligence and counterintelligence will produce information that is useful in detecting violations of law or locating and apprehending persons who violate the law. These intelligence and counterintelligence activities do not thereby become law enforcement activities.

30. Law enforcement authorities include military police, local police, state police, the Federal Bureau of Investigation, the Executive Protective Service, and special police employed by federal, state and local government agencies. The Army Intelligence and Security Command, the Naval Investigative Service, and the Air Force Office of Special Investigations each have counterintelligence responsibilities and law enforcement responsibilities under the Uniform Code of Military Justice. When engaged in law enforcement responsibilities, these components are law enforcement authorities. Components that supervise these military investigative authorities, when they are engaged in law enforcement responsibilities, are also law enforcement authorities.

31. Lawful investigation. An investigation qualifies as a lawful investigation if it is conducted by a DoD component that has authorization to conduct the particular type of investigations (for example, counterintelligence, physical security, communications security) and if the techniques used to further the investigation are lawful. The term does not include an investigation of "leaks" directed against a particular individual and using techniques governed by procedures in enclosure 1 when the purpose of the investigation is to determine the individual's source of information. Such inquiries may be undertaken only if there is a reasonable belief that the individual who has the information is personally engaged in activities that may involve a violation of law or Department of Defense regulations applicable to that individual.

32. Member of a military service means a person currently serving in the United States Army, Navy, Air Force, Marine Corps, or an active reserve or National Guard component thereof, including the United States Coast Guard when the Coast Guard is operating as a part of the Department of the Navy.

33. Narcotics production or trafficking means activities outside the United States to produce or deal in narcotics or other substances controlled under the Controlled Substances Act of 1970, Pub. L. No. 91-613, title II, 84 Stat. 1242, ref. (p) (codified in scattered sections of 15, 31, 42 U.S.C.).

34. Personnel security means the protection resulting from measures designed to insure that persons employed in sensitive positions of trust are suitable for such employment with respect to loyalty, character, emotional stability and reliability and that such employment is clearly consistent with the interests of the national security. It includes measures designed to insure that persons granted access to classified information remain suitable for such access and that access is consistent with the interests of national security.

35. Personnel security investigation means:

- a. An inquiry into the activities of a person granted access to intelligence or other classified information; or a person who is to be granted access to intelligence or other classified information, including persons who are granted access to facilities of Defense intelligence components; or a person to be

assigned or retained in a position with sensitive duties. The investigation is designed to develop information pertaining to the suitability, eligibility and trustworthiness of the individual with respect to loyalty, character, emotional stability and reliability;

- b. inquiries and other activities directed against DoD employees or members of a military service to determine the facts of possible voluntary or involuntary compromise of classified information by them;
- c. investigations conducted when it is learned that a DoD employee or member of a military service has relatives or close associates abroad; and
- d. the collection of information about or from military personnel in the course of tactical training exercises for security training purposes.

36. Physical security means the protection resulting from physical measures designed to safeguard personnel, to prevent unauthorized access to equipment, facilities, material and documents, and to safeguard against espionage, sabotage, damage and theft.

37. Physical security investigation means an inquiry into or survey of the effectiveness of security controls and procedures established to protect classified information, equipment or property. Security controls or procedures include physical controls established around the perimeter of a facility, building or office; controls established with respect to the equipment or other property; procedures governing access by visitors and procedures related to access to intelligence information by persons other than employees; procedures and controls related to the safe storage and transmittal of classified information including cryptographic information, materials and equipment; procedures limiting employee access to classified information on a need-to-know basis; and

procedures and controls related to the disposal of classified equipment and wastes. Physical security investigation includes inquiries and other actions undertaken against United States persons who are present upon, or are in physical proximity to, an installation or facility of a DoD component and who are reasonably believed to pose a clear threat to the physical safety of personnel, equipment, information, or activities of such component.

38. Physical surveillance means an unconsented, systematic and deliberate observation of a person by any means on a continuing basis, or unconsented acquisition of a nonpublic communication by a person not a party thereto or visibly present thereat through any means not involving electronic surveillance. This definition does not include overhead reconnaissance not directed at specific United States persons.

39. Reasonable belief. Several of these procedures require an assessment of "reasonable belief." A reasonable belief arises when the facts and circumstances are such that a reasonable person would hold the belief. Reasonable belief must rest on facts and circumstances that can be articulated; "hunches" or intuitions are not sufficient. Reasonable belief can be based on experience, training and knowledge in foreign intelligence or counterintelligence work applied to facts and circumstances at hand, so that a trained and experienced "reasonable person" might hold a reasonable belief sufficient to satisfy this criterion when someone unfamiliar with foreign intelligence or counterintelligence work might not. Reasonable belief also depends on the circumstances in which it is formed. In emergency situations, a reasonable belief can be supported by the facts at hand and the need to take action immediately to avoid imminent harm.

40. Sabotage means any activity that involves a violation of chapter 105 of title 18, United States Code, or that would involve such a violation if committed against the United States.

41. Signals intelligence means a category of intelligence including communications intelligence, electronic intelligence, and instrumentation intelligence, either individually or in combination.

- a. Communication intelligence means information derived from foreign communications by other than the intended recipients.

- b. Electronics intelligence means information derived from electromagnetic radiations other than communications emanating from foreign sources other than nuclear detonations or radioactive sources.
- c. Instrumentation intelligence means information derived from the collecting and processing of foreign telemetry, beaconry, nonimagery infrared and coherent light signals.

42. State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, Wake Island, Midway Island, Guam, Palmyra Island, Johnston Atoll, Navassa Island, and Kingman Reef.

43. United States, when used to describe a place includes the territories of the United States.

44. United States person means a citizen of the United States, an alien lawfully admitted for a permanent residence, an unincorporated association organized in the United States or substantially composed of United States citizens or aliens admitted for permanent residence, or a corporation incorporated in the United States.

45. Wire communication means any communication while it is being carried by a wire, cable or other like connection furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of interstate or foreign communications.

Date of Attorney General Approval

GR 8/15/79

Date of Secretary of Defense Approval

W. Graham Clayton Jr

30 NOV 1979

ATTORNEY GENERAL GUIDELINES FOR
FBI FOREIGN INTELLIGENCE COLLECTION
AND FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

EFFECTIVE: MAY 1, 1980





(CLASSIFICATION REVIEWED:
JULY 15, 1980)

SECRET MATERIAL ATTACHED

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ATTORNEY GENERAL GUIDELINES FOR
FBI FOREIGN INTELLIGENCE COLLECTION
AND FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

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- Dissemination to the White House (U)A-1

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ATTORNEY GENERAL GUIDELINES FOR FBI FOREIGN INTELLIGENCE COLLECTION AND FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

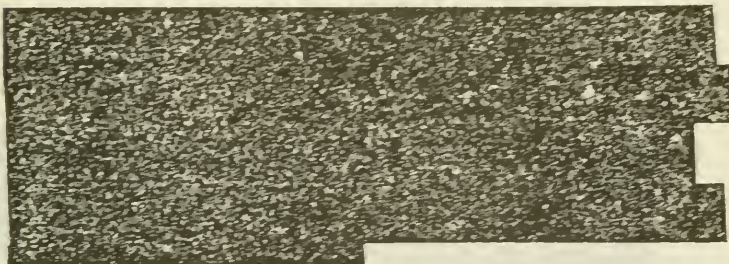
I. SCOPE (U)

- A. These guidelines exclusively govern all investigative matters under the supervision of the Intelligence Division of the FBI, as well as those investigative matters under the supervision of other elements of the FBI which are investigations of espionage and international terrorism. (U)
- B. All questions as to the coverage and interpretation of these guidelines will be resolved by the Office of Intelligence Policy and Review where there is a significant new legal question. (U)

II. DEFINITIONS (U)

- A. CLANDESTINE INTELLIGENCE ACTIVITIES: any activity conducted for intelligence purposes or for the purpose of affecting political or governmental processes by or pursuant to the direction of a foreign power in a manner designed to conceal from the United States Government the nature or fact of such activity or the role of such foreign power. (U)

B.



C.

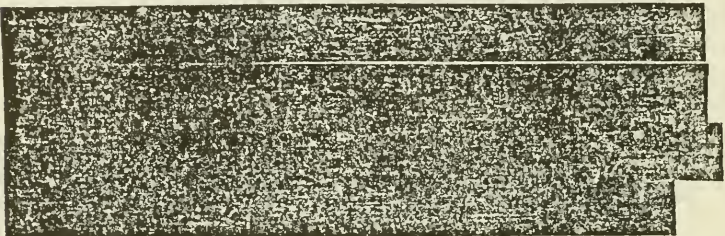
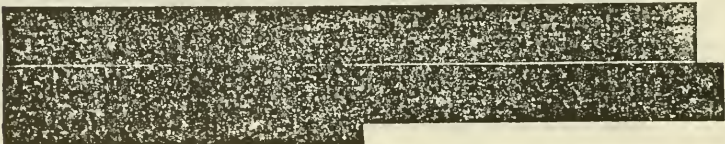
- D. EMPLOYEE OR ASSET: any person employed by, assigned to, or acting for or at the direction of the Federal Bureau of Investigation. (U)

Classified and Extended by: Multiple Sources
 Date and Classification: APRIL 20, 1990 SECRET
 Reason for Extension: FCIM 11, 1-2.4.2 (2), 1
 Date of Review for Declassification: APRIL 22, 2000


SECRET

THIS DOCUMENT CONTAINS INFORMATION ORIGINALLY CLASSIFIED BY THE DIRECTOR, FBI, AND INFORMATION DERIVATIVELY CLASSIFIED FROM PRESIDENTIAL DIRECTIVE #19, DATED AUGUST 25, 1977, BY SIGMUND K. SPEDZINSKI.

SECRET

- E. FOREIGN INTELLIGENCE AGENT: a person, other than an officer of a foreign intelligence service, who is engaged in clandestine intelligence activities, sabotage, or international terrorist activities pursuant to the direction of a foreign power, or who knowingly conspires with or aids or abets such a person in such activities. (U)
- F. FOREIGN COUNTERINTELLIGENCE: information gathered and activities conducted to protect against espionage and other clandestine intelligence activities, sabotage, and international terrorist activities conducted by or pursuant to the direction of foreign powers, but not including personnel, physical, document, or communications security programs. (U)
- G. 
- H. FOREIGN INTELLIGENCE OFFICER: an individual who is a member of a foreign intelligence service. (U)
- I. FOREIGN INTELLIGENCE: information relating to the capabilities, intentions and activities of any foreign power that is relevant to the national security or to the conduct of foreign affairs of the United States. (U)
- J. 
- K. FOREIGN POWER:
1. a foreign government or any component thereof, whether or not recognized by the United States;
 2. a faction of a foreign nation or nations, not substantially composed of United States persons;

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3. an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;
 4. a group engaged in international terrorism or activities in preparation therefor;
 5. a foreign-based political organization, not substantially composed of United States persons. (U)
- L. FOREIGN VISITORS: foreign nationals in the United States who are not permanent resident aliens of the United States. (U)
- M. INTERNATIONAL TERRORISM: any activity or activities which:
1. involves killing, causing serious bodily harm, kidnapping, or violent destruction of property, or an attempt or credible threat to commit such acts; and
 2. appears intended to endanger a protectee of the Secret Service or the Department of State or to further political, social or economic goals by intimidating or coercing a civilian population or any segment thereof, influencing the policy of a government or international organization by intimidation or coercion, or obtaining widespread publicity for a group or its cause; and
 3. transcends national boundaries in terms of the means by which it is accomplished, the civilian population, government, or international organization it appears intended to coerce or intimidate, or the locale in which its perpetrators operate or seek asylum. (U)
- N. INTERNATIONAL TERRORIST: an individual who knowingly engages in international terrorism or activities in preparation therefor, or knowingly aids or abets any person engaged in such activities. (U)
- O. 
- P. PUBLICLY AVAILABLE: information that has been published or broadcast for general public consumption, is available on request to any member of the general public, could lawfully

be seen or heard by any casual observer, or is made available at a meeting open to the general public. (U)

- Q. PURSUANT TO THE DIRECTION OF A FOREIGN POWER: the determination that activities are pursuant to the direction of a foreign power must be based on consideration of the extent to which the following factors are present:
1. control, leadership or policy direction by a foreign power;
 2. financial or material support by a foreign power;
or
 3. participation in leadership, assignments, or discipline by a foreign power. (U)
- R. SUBJECTS: for purposes of these guidelines, subjects of counterintelligence investigations are divided into four categories: (1) foreign powers, (2) foreign officials, (3) foreign visitors, and (4) United States persons. (U)
- S. TARGET: an individual or organization which is the object of a recruitment effort by a foreign intelligence service or international terrorists; or information, property, or activities in the United States which are the object of intelligence activity by a foreign intelligence service, or the object of activity by international terrorists. (U)
- T. UNITED STATES: when used in a geographical sense, means all areas under the territorial sovereignty of the United States. (U)
- U. UNITED STATES PERSON: a citizen of the United States, an alien lawfully admitted for permanent residence, an unincorporated association organized in the United States or substantially composed of United States citizens or aliens admitted for permanent residence, or a corporation incorporated in the United States, but not including a corporation or an association which is a foreign power, as defined above. (U)

III. FBI RESPONSIBILITIES (U)

In fulfilling its foreign intelligence and foreign counter-intelligence responsibilities the FBI is, under the standards and procedures set forth in these guidelines, authorized to:

- A. Detect and prevent espionage, sabotage, and other clandestine intelligence activities, by or pursuant to the direction of foreign powers, through such lawful counter-intelligence activities within the United States as are necessary for such purposes. (U)
- B. Investigate violations of the espionage statutes whether or not such violations are committed pursuant to the direction of a foreign power. (U)
- C. Conduct activities in support of the foreign intelligence collection requirements of other U.S. intelligence agencies within the United States when requested by officials of the Intelligence Community designated by the President, and with the specific approval of the Attorney General. (U)
- D. Collect foreign intelligence within the United States when requested by officials of the Intelligence Community designated by the President to make such requests. (U)
- E. Disseminate foreign intelligence and foreign counter-intelligence information to appropriate federal agencies, and to foreign governments. (U)
- F. Produce and disseminate foreign counterintelligence reports and studies. (U)
- G. Detect and prevent international terrorism through such operations within the United States as are necessary for such purpose. (U)
- H. Coordinate all foreign counterintelligence activities conducted within the United States by any U.S. intelligence entity. (U)
- I. Request agencies of the U.S. Government or agencies of foreign governments to conduct or, with the concurrence of the Director of Central Intelligence, conduct investigations outside the U.S. in connection with matters within the investigative jurisdiction of the FBI. (U)
- J. Conduct certain investigations within the United States based upon the request of law enforcement, intelligence, or security agencies of foreign governments. (U)
- K. Coordinate the foreign intelligence collection activities of the CIA within the United States in accordance with procedures promulgated by the Director of Central Intelligence and approved by the Attorney General. (U)


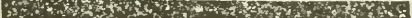


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IV. COLLECTION OF FOREIGN INTELLIGENCE AND
FOREIGN COUNTERINTELLIGENCE INFORMATION (U)

A. GENERAL (U)

1. The FBI may purposefully collect foreign intelligence and foreign counterintelligence information concerning United States persons without their consent only where such collection is necessary to the conduct of the intelligence functions authorized in Section III and only as permitted by these guidelines. Such collection will be accomplished by the least intrusive means that will provide foreign intelligence or counterintelligence of the quality, scope and timeliness required. (U)
2. In collecting foreign intelligence or conducting foreign counterintelligence investigations, the FBI shall not use drugs, physical force except in accord with law, or any technique contrary to law or fundamental standards of due process under the Constitution and laws of the United States. (U)

D. INVESTIGATIONS FOR FOREIGN GOVERNMENTS (U)

1. Any request from a law enforcement, intelligence, or security agency of a foreign government for FBI investigations within the United States must identify the information sought and specify the purposes of the investigation. (U)
 2. Whenever such a request raises a question of propriety or legality, the question shall be resolved by the Office of Intelligence Policy and Review. (U)
 3. 

 4. 
Any investigation approved to be undertaken on behalf of a law enforcement, intelligence or security agency of a foreign government must be conducted in accordance with these guidelines. (U)
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E. FOREIGN INTELLIGENCE (U)

1. COLLECTION OF FOREIGN INTELLIGENCE INFORMATION

- a. Upon a request, made or confirmed in writing, by an official of the Intelligence Community designated by the President, and with the approval of FBI Headquarters, the FBI may collect foreign intelligence information to clarify or complete foreign intelligence information previously disseminated by the FBI to the Intelligence Community. Copies of such requests shall be provided to the Office of Intelligence Policy and Review. The FBI may also collect foreign intelligence information in response to requirements of topical interest published by the National Foreign Intelligence Board (NFIB), or its successor, directed to the Intelligence Community. (U)
- b. With the approval of the Attorney General or a designee the FBI may collect foreign intelligence information in response to tasking specifically levied on the FBI by an official of the Intelligence Community designated by the President. The requesting official shall certify that the information sought is foreign intelligence information relevant to the mission of the requesting agency, and the request shall set forth the reasons why the FBI is being asked to undertake the collection. (U)



2. OPERATIONAL SUPPORT

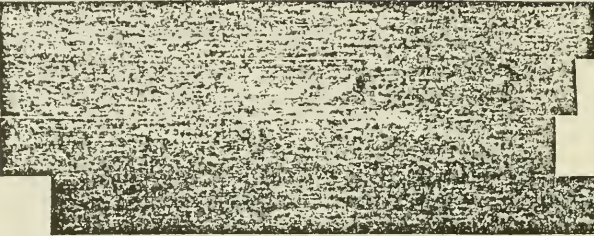



- a. The FBI may, with the approval of the Attorney General or a designee, provide operational support to authorized intelligence activities of other entities of the Intelligence Community upon a request made or confirmed in writing by an official of the U.S. Intelligence Community designated by the President. The requesting official shall explicitly describe the support required, the period of time such assistance is required, the reasons why the FBI is being requested to furnish the assistance, the techniques that are expected to be utilized, and shall also certify that such assistance is necessary to the success of an authorized activity of the requesting entity. (U)
- b. Operational support by the FBI may include techniques set forth in the approved request for operational support and, with the approval of FBI Headquarters, any other technique which does not substantially alter the character of the support operation. The Office of Intelligence Policy and Review shall be promptly notified of the utilization of any such additional techniques. (U)
- c. Recruitment of new assets to obtain operational information or services necessary to support the collection activities of the requesting agency and not to obtain foreign intelligence will not in itself substantially alter the character of a support operation and is permissible so long as these assets are subject to the same limitations as are required under these guidelines for any other FBI employee or asset. (U)
- d. Where the duration of the activity requiring FBI support operations or the support activity itself is limited by statute, court order, Executive Order 12036 or procedures promulgated thereunder, or these guidelines, the FBI support may be provided for the same period of time. (U)

F. TERMINATING INVESTIGATIONS (U)

ORIGINAL

V. ADDITIONAL RESTRICTIONS (U)

A. UNDISCLOSED PARTICIPATION (U)

1. 



2. Undisclosed participation which will influence the activity of the organization may not be undertaken unless:
 - a. FBI Headquarters has determined the activity influenced does not involve the exercise of First Amendment rights and the effect on the activities of the organization is incidental to the primary purpose of the undisclosed participation; or
 - b. the Director or Acting Director of the FBI has determined that extraordinary circumstances exist and that there is probable cause to believe the organization is engaged in espionage, sabotage, clandestine intelligence activity or international terrorism pursuant to the direction of a foreign power. (U)

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3.

4. For the purpose of authorizing undisclosed participation:

- a. "organization with the United States" includes unincorporated associations (including legal entities of all types, such as clubs, charitable and fraternal groups, partnerships, and other similar types of groups), academic institutions, and corporations incorporated in the United States, but does not include an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments, or organizations composed primarily of individuals who are not U.S. persons and which are reasonably believed to be acting on behalf of a foreign power. (U)
- b. "appropriate officials of the organization" means any official of the organization reasonably believed to be authorized to act on behalf of the organization in relation to the activity to be engaged in. (U)

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- c. "participation in any organization" means engaging in organization activities on a sporadic or regular basis but does not include isolated attendance at an activity sponsored by an organization and open to non-members. It does not include employment or other personal activities not related to intelligence activities or registration and attendance at an academic institution solely to obtain education or training relevant to FBI employment. (U)

B.

C. OPERATIONS OUTSIDE THE UNITED STATES (U)

1. The FBI may investigate or otherwise conduct activities outside the United States in the following circumstances:
 - a. With the written request or approval of the Director of Central Intelligence or a designee, the approval of the Attorney General or a designee, and the knowledge and consent of the foreign government, the FBI may conduct investigations or participate with foreign officials in conducting investigations abroad. (U)

3. In conducting investigations outside the United States, the FBI shall not request or otherwise encourage, directly or indirectly, an agency of the U.S. Government or of a foreign government to undertake investigative techniques, or employ investigative methods, which are forbidden by United States law or by the Constitution of the United States as it applies extraterritorially under those circumstances; and Extraordinary Techniques may not be used without the express approval of the Attorney General as provided in Section VI. of these guidelines. (U)

D. CONTRACTING (U)

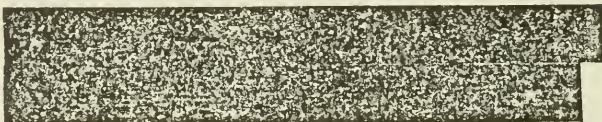
1. The FBI shall not enter into a contract or arrangement for the provision of goods or services with an academic institution in the United States, or direct or encourage others to do so on its behalf, without disclosing FBI sponsorship to the appropriate officials of the academic institution. This restriction does not apply to the registration or attendance at an academic institution by an FBI asset or employee solely to obtain training or education relevant to FBI employment, or to the purchase of real estate or the lease of real estate where such property is not used by the institution for academic purposes. (U)
2. The FBI shall not enter into a contract or arrangement for the provision of goods or services with a private company or non-academic institution in the United States without disclosing FBI sponsorship to the appropriate officials of the company or institution except when:
 - a. the contract or arrangement is a routine services contract, procurement contract, or transaction carried out under the Economy Act (38 Stat. 1084);
 - b. the contract or arrangement is for temporary lodging or the rental of personal property for a period of 31 days or less and non-disclosure is necessary to maintain essential cover or proprietary arrangements for activity authorized under these guidelines; or

- c. the Director of the FBI, or a designee, determines that non-disclosure is necessary to maintain essential cover or proprietary arrangements for activity authorized under these guidelines and that the need for such concealment outweighs any adverse consequences which any party to the contract or arrangement might suffer through subsequent disclosure. This prohibition, however, does not require a disclosure that a procurement is for the FBI if it is a purchase of goods or services from a company doing business with the general public and an individual making the same procurement in a private capacity would not be required or expected to disclose a principal for whom such individual was acting. (U)

E. MAIL COVERS (U)

1. FBI personnel may obtain mail covers only in conformity with U.S. Postal Service regulations. (U)

2.



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3. Where time is of the essence, FBI Headquarters may make an oral request of the Chief Postal Inspector or a designee for a mail cover if a factual basis for employment of a mail cover under these guidelines exists, and the examination being requested may yield important foreign counterintelligence information, the immediate acquisition of which is necessary to protect national security. Such an oral request must be confirmed in writing within two business days. (U)
4. In the circumstances described in paragraph 3 above, a mail cover which would otherwise require prior approval of the Attorney General may be requested without such prior approval so long as FBI Headquarters reports the mail cover to the Attorney General within two business days together with a complete explanation of the exigent circumstances. (U)

5. Extensions of mail covers may be requested of appropriate Postal Service officials under the same conditions and procedures applicable to the original request under these guidelines, except that extensions of mail covers requiring initial approval of the Attorney General may be approved by the Attorney General or a designee. (U)

F. TELEVISION CAMERAS AND OTHER MONITORING (U)

1. No electronic or mechanical device such as a television camera, movie camera, high power telescope, or "beeper" may be used to surreptitiously and continuously monitor any person within the United States under circumstances in which that person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes unless such monitoring is undertaken pursuant to the Foreign Intelligence Surveillance Act of 1978. (U)
2. FBI Headquarters may authorize the use of television cameras and "beepers" to surreptitiously and continuously monitor a person in the United States under circumstances in which a warrant would not be required for law enforcement purposes if such use is necessary to obtain significant counterintelligence or foreign intelligence information and if there is no question as to whether a reasonable expectation of privacy exists. In cases where such a question arises, approval of the Office of Intelligence Policy and Review must be obtained. (U)
3. With the approval of the SAC, FBI Field Offices may utilize any other electronic or mechanical device to surreptitiously and continuously monitor a person in the United States under circumstances in which a warrant would not be required for law enforcement purposes if such use is necessary to obtain significant foreign counterintelligence or intelligence information and if there is no question as to whether a reasonable expectation of privacy exists. In cases where such a question arises, approval may be granted only with the prior con-

currence of FBI Headquarters, as required for television cameras and "beepers" in paragraph 2 above. (U)

4. Monitoring is surreptitious and continuous if it is targeted against a particular person or group of persons without interruption for a substantial period of time and is conducted secretly for the purpose of keeping the subject of the monitoring unaware of it. (U)
5. This section does not apply to monitoring of space for physical security purposes where specific persons are not targeted. (U)

G. CONSENSUAL MONITORING (U)

1. This section governs techniques, the employment of which would constitute electronic surveillance under the Foreign Intelligence Surveillance Act but for the consent of a party to the communication. (U)
2. FBI Headquarters may authorize the use of consensual monitoring for a reasonable period of time not to exceed ninety days if such use is necessary to obtain significant counterintelligence or foreign intelligence information and a lawful consent is obtained. In cases where a question as to the lawfulness of the consent arises, approval of the Office of Intelligence Policy and Review must be obtained. (U)
3. Extensions of consensual electronic surveillance may be requested under the same conditions and procedures applicable to the original request under these guidelines and shall set forth the reasons why additional surveillance is required. (U)

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VI. EXTRAORDINARY TECHNIQUES. To fulfill its responsibilities under these guidelines, the FBI may employ the following Extraordinary Techniques when their use is authorized by the President or by statute and approved in accordance with the procedures and standards set forth in this part. (U)

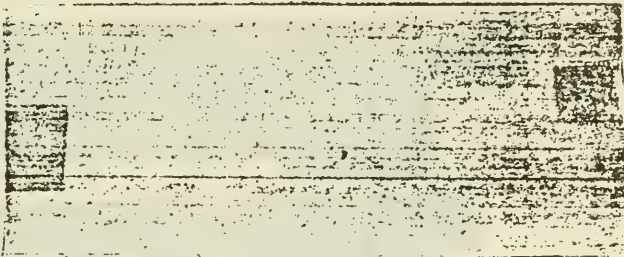
- A. ELECTRONIC SURVEILLANCE. The FBI may undertake electronic surveillance in accordance with the Foreign Intelligence Surveillance Act of 1978. (U)
- B. PHYSICAL SEARCHES. The following procedures apply to physical searches and seizures of property or premises in connection with the gathering of foreign counter-intelligence or foreign intelligence information or information concerning international terrorism. They do not apply to searches for the purpose of placing or maintaining authorized electronic surveillance devices or conducting surveys in connection therewith; or to the receipt by the FBI of information, property or materials furnished by individuals acting on their own initiative, without direction or request by the FBI, regardless of the manner of acquisition. (U)

1.

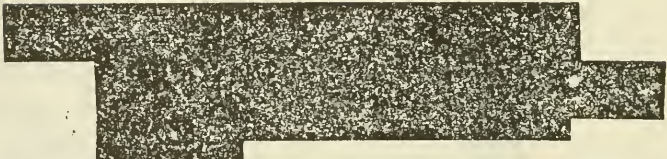



2. DEFINITIONS (U)

a.



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- c. Searches authorized in this section shall be directed solely for the purpose of obtaining significant foreign intelligence, foreign counterintelligence or international terrorism information. (U)
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- c. Any request to renew authority to examine mail under this section shall require new determinations pursuant to subsection b. (U)

8. EMERGENCY PROCEDURES (U)

- a. A search or seizure under this part which would otherwise require the prior written approval of the Attorney General may be approved orally by the Attorney General if the circumstances indicate that the opportunity to search or seize would be lost in the time necessary to prepare written approval but the approval shall be reduced to writing as soon as possible and shall set forth the exigent circumstances justifying oral approval. (U)
- b. A search or seizure under this part which would otherwise require the prior approval of the Attorney General may be undertaken in exigent circumstances without such approval under the following circumstances:

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- 1) the FBI has determined that all of the conditions necessary to justify the search under this part (other than Attorney General approval) have been met;
 - 2) the FBI has determined that the opportunity to acquire the information will be lost in the time necessary to obtain even oral approval of the Attorney General; and
 - 3) the FBI reports the information regarding the search or seizure to the Attorney General within 24 hours together with an explanation of the exigent circumstances justifying the search. (U)
9. MINIMIZATION OF INFORMATION CONCERNING UNITED STATES PERSONS (U)

FBI assets or employees who undertake searches and seizures in accordance with this part shall direct their activities only at the gathering of foreign intelligence, foreign counterintelligence or international terrorism information. No information relating to U.S. persons which is incidentally acquired in the course of such searches shall be retained or indexed by the FBI unless it relates to the counterintelligence or law enforcement responsibilities of the FBI, concerns employees or assets of the FBI, or constitutes information which may be disseminated pursuant to guidelines governing the dissemination of information acquired by the use of extraordinary techniques. (U)

C. GENERAL PROHIBITIONS (U)

1. 

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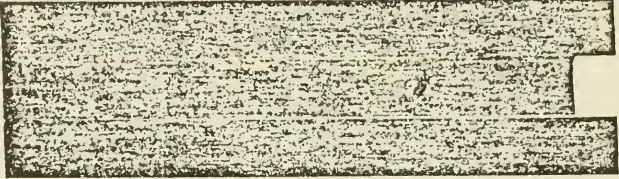
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4. New technical devices, which might intrude on privacy or otherwise violate provisions of these guidelines shall not be used without the express written authorization of the Attorney General. (U)

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VII. REPORTING, DISSEMINATION AND RETENTION (U)

A. REPORTING (U)

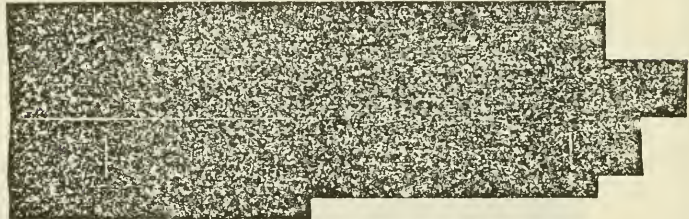
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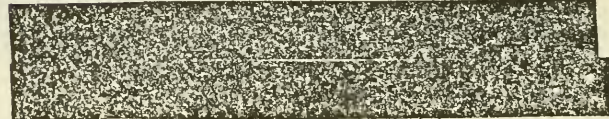
2.

FBI Headquarters shall promptly notify the Office of Intelligence Policy and Review of any request by a law enforcement, intelligence or security agency of a foreign government for information or assistance in a foreign counterintelligence or investigative matter involving a U.S. person. FBI Headquarters shall maintain, and provide to the Office of Intelligence Policy and Review upon request, statistics on the number of requests for assistance received from law enforcement, intelligence or security agencies of foreign governments involving U.S. persons. The statistics shall identify the nature of the request and whether the assistance requested was furnished or declined. (U)

3.



4.



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5. In cases in which the FBI coordinates CIA collection of foreign intelligence in the United States, the FBI will simultaneously notify the Office of Intelligence Policy and Review of the general nature and circumstances of the collection effort where the information to be collected concerns a U.S. person. (U)
6. Summaries furnished under paragraph 3 or reports of investigations reviewed under paragraph 4 concerning assets or potential assets may be prepared for review in a form which protects identity, but must include the status of the subject, i.e., whether a foreign national or American citizen, and a description of the techniques used for recruitment or attempted recruitment. (U)
7. To ensure the security of foreign intelligence collection and counterintelligence investigations, the Office of Intelligence Policy and Review shall conduct reviews of FBI reports in a physically secure area at FBI Headquarters. (U)

B. DISSEMINATION. The following provisions govern dissemination of information obtained during foreign intelligence collection and support activities and counterintelligence investigations. (U)

1. GENERAL (U)

- a. information which is not publicly available shall not be disseminated in a manner that identifies any U.S. person, without such person's consent, unless such person's identity is necessary to understand the information, assess its importance, or to enforce criminal laws or prevent a crime. (U) *
- b. nothing in this part shall limit the authority of the FBI to inform any individual whose safety or property is directly threatened by force or violence, so that they may take appropriate protective safeguards. (U)
- c. this part does not restrict dissemination of information by the FBI, including identifying information, when necessary to the conduct of investigations within its jurisdiction. (U)

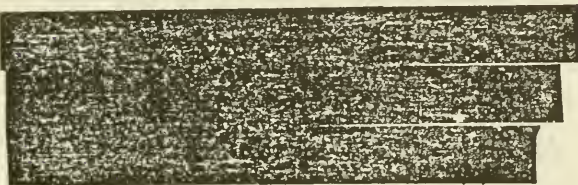
*/ See also Attorney General procedures for reporting federal crimes by intelligence employees and non-employees.

- d. information that is evidence of a passport or visa fraud or attempted fraud may be disseminated to the Department of State. (U) *
- e. information that is evidence of a violation of the immigration and nationality laws may be disseminated to the Immigration and Naturalization Service. (U) *
- f. DISSEMINATION TO CONGRESSIONAL COMMITTEES (U)
 - 1) Information relating to foreign intelligence, foreign counterintelligence, or criminal conduct may be disseminated upon request to congressional committees having jurisdiction over such matters to the extent authorized by the Attorney General or a designee. If the information was collected at the request of, or in collaboration with another agency, that agency shall be consulted prior to dissemination. (U)
 - 2) The information disseminated shall not identify or permit identification of United States persons, except by general characterization, unless the identification is necessary to understand the information or assess its importance. (U)
 - 3) Any subsequent request by the receiving committee for identification of United States persons, generally characterized in the initial dissemination, shall be referred to the Attorney General or a designee for a determination whether the identification is necessary to understand the information or assess its importance. (U)
- 2. INFORMATION OBTAINED BY NON-EXTRAORDINARY TECHNIQUES (U)
 - a. OTHER FEDERAL AUTHORITIES.* The FBI may disseminate facts or information obtained during foreign intelligence collection, preliminary inquiries and counterintelligence investigations to other federal authorities when such information:

*/ See footnote page 34.

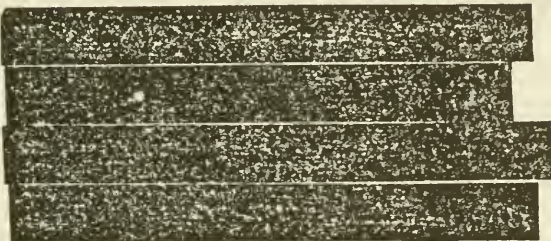
- 1) relates to a crime which falls within their investigative jurisdiction;
- 2) constitutes foreign intelligence information required by federal agencies having primary responsibility therefor;
- 3) is required to be furnished to another federal agency by Executive Order 10450; or
- 4) is required to be disseminated by statute, National Security Council directive, interagency agreement approved by the Attorney General, or Presidential directive. (U)

b.



c. FOREIGN GOVERNMENTS (U)

1)



- 2) Information received from or obtained at the request of a law enforcement, intelligence or security agency of a foreign government may be disseminated by the FBI subject to these guidelines in the same manner as similar information acquired by the FBI within the United States. (U)

3. INFORMATION OBTAINED BY EXTRAORDINARY TECHNIQUES (U)

a. GENERAL (U)

- 1) Certain specific needs to receive information from the FBI are identified in this section. The FBI should ascertain other needs of agencies receiving foreign intelligence or counterintelligence information on a regular basis and should disseminate only that information which is relevant to the official responsibilities of the agency receiving it. (U)
- 2) Receiving agencies should be instructed that no dissemination is to be made outside that agency without the consent of the FBI. (U)

b. DISSEMINATION OF INFORMATION ACQUIRED PURSUANT TO THE FOREIGN INTELLIGENCE SURVEILLANCE ACT IS GOVERNED SOLELY BY THE MINIMIZATION PROCEDURES OF EACH COURT ORDER AUTHORIZING AN ELECTRONIC SURVEILLANCE. This part applies to any information acquired through the utilization of any other extraordinary technique. (U)

c. DISSEMINATION FOR FOREIGN INTELLIGENCE PURPOSES (U)

- 1) Information gathered at FBI initiative and disseminated to other federal agencies for foreign intelligence purposes shall not identify or permit identification of United States persons, except by general characterization, unless the identification is necessary to understand the information or to assess its importance. (U)
- 2) Information gathered at the request of another agency may be disseminated to that agency in a form which identifies or permits identification of U.S. persons if that agency requests such identification in writing, setting forth the basis for its belief that the information is necessary to understand the information or assess its importance. (U)

- 3) Any request by a receiving or initiating agency for identifying information shall be referred to the Director or a designee for a determination whether the identification is necessary to understand the information or assess its importance. (U)

d. DISSEMINATION OF COUNTERINTELLIGENCE INFORMATION (U)

- 1) Information disseminated to other federal agencies in the intelligence community which have a direct counterintelligence interest in the information*/ may identify or permit identification of United States persons. Where the information is of interest to, but does not relate to the direct responsibilities of the receiving agency, United States persons may not be identified. (U)
- 2) Any subsequent request by the receiving agency for identification of United States persons, generally characterized in the initial dissemination, shall be referred to the Director of the FBI or a designee for a determination whether the identification is relevant to a direct counterintelligence interest of the receiving agency. (U)

e. DISSEMINATION OF INFORMATION CONCERNING SOURCES OR CONTACTS (U)

On the specific request by name from other agencies in the intelligence community, the FBI may disseminate information concerning the suitability or credibility of sources or contacts of the requesting agency or persons who the requesting agency reasonably believes are potential sources or contacts in the course of a specific investigation or collection activity. (U)

*/ There are three principal entities in the United States Government engaging in foreign counterintelligence activities: FBI, CIA and organizations within the Department of Defense designated by the Secretary of Defense. Since the National Security Council is responsible for the development and formulation of national intelligence activities pursuant to Executive Order, it is also a recipient for purposes of these guidelines. Likewise, the Department of State may be a recipient of information relating to international terrorism in carrying out its foreign affairs responsibilities. (U)

f. DISSEMINATION OF INFORMATION RELATING TO CRIMINAL ACTIVITY.* The dissemination of information that is evidence of a crime which is acquired by extraordinary techniques during counterintelligence investigations or the collection of foreign intelligence information is subject to the following conditions:

- 1) Information that is evidence of a crime may be disseminated to federal, ~~state or local~~ agencies having investigative jurisdiction thereof or having responsibility to provide protection against such activity, with the concurrence of the Criminal Division of the Department of Justice in consultation with the Office of Intelligence Policy and Review, taking into account the seriousness of the crime, the risk of compromising the source of the investigation, and whether the information is necessary to successful prevention, detection or prosecution. (U)
- 2) Information disseminated under this provision may identify United States persons involved in the criminal conduct or those who are victims or potential victims of such conduct. (U)
- 3) Any dissemination of information under this provision shall include a notice to the recipient that the information being furnished should not be used in connection with a prosecution or other judicial proceeding without consultation with the FBI and the express written approval of the Attorney General or a designee. (U)

g. DISSEMINATION OF INFORMATION CONCERNING TRUSTWORTHINESS OF FEDERAL EMPLOYEES AND PERSONS GRANTED ACCESS TO SENSITIVE INFORMATION OR FACILITIES (U)

- 1) Information which raises a question about the trustworthiness of a current federal

*/ See footnote page 34.

employee, a person holding a security clearance or having access to sensitive information or facilities may be disseminated to the government employer, the agency which granted the clearance or access, or another federal agency having responsibility to investigate the trustworthiness of the individual. Dissemination of such information must be approved by FBI Headquarters. The information disseminated may identify the individual. (U)

- 2) Information which raises a question about the trustworthiness of individuals who are applicants or prospective government employees should not be disseminated until the FBI has verified the employer's official interest in the individual concerned. (U)

h. DISSEMINATION TO FOREIGN GOVERNMENTS (U)

- 1) FOREIGN INTELLIGENCE. Any requests by another federal agency to the FBI for authority to disseminate foreign intelligence information obtained from the FBI which identifies or permits identification of United States persons shall be referred to the Attorney General or a designee for a determination whether the dissemination is in the interest of the security or foreign policy of the United States and consideration of the effect the dissemination may be expected to have on the U.S. persons. Where there may be significant implications for U.S. foreign relations involved in the dissemination, the Department of State shall be consulted prior to approval of the dissemination. (U)
- 2) COUNTERINTELLIGENCE INFORMATION. Counter-intelligence information may be disseminated to a cooperating foreign intelligence or security agency when such dissemination is approved by FBI Headquarters as being in the interest of the security or foreign policy of the United States. Where there may be significant implications for U.S. foreign relations involved in the dissemination, the Department of State shall be consulted prior to dissemination. Any dissemination of such information to a foreign agency is subject to the following conditions:

- (i) When a request is initiated by a foreign agency for information on a named United States person, the FBI may disseminate information concerning that individual, and other United States persons whose identity is necessary to understand or assess the importance of the information disseminated, but only when such dissemination is in the interest of the security or foreign policy of the United States and after consideration of the effect the dissemination may be expected to have on any identified U.S. person. (U)
 - (ii) Information disseminated to a foreign agency at FBI initiative shall not identify United States persons except by general characterization, unless there is information of direct interest to the receiving agency indicating that such person is or may be engaged in clandestine intelligence activities pursuant to the direction of a foreign power. (U)
 - (iii) Any subsequent request by the foreign agency receiving the information for identification of United States persons, generally characterized in the initial dissemination, shall be referred to the Attorney General or a designee for a determination whether identification is of direct interest to the foreign agency and dissemination is in the interest of the security of foreign policy of the United States. (U)
3. CRIMINAL INFORMATION.* Information relating to criminal activity may be disseminated to foreign law enforcement or security agencies having jurisdiction of the offense, subject to the following conditions:
- (i) Where there may be significant implications for U.S. foreign relations involved in the dissemination, the Department of State shall be consulted prior to dissemination;
 - (ii) Information pertaining to criminal activity may be disseminated to the appropriate agency of a foreign government, with the concurrence of the Attorney General or a designee, taking into account the following factors:

*/ See footnote page 34 - 41 -

- obligations imposed on the United States by treaties or other international agreements,
 - the seriousness of the offense,
 - the risk of compromising the source of the information, and
 - whether dissemination of such information is in the interests of the United States;
- (iii) Information disseminated under this part may identify United States persons involved in the criminal conduct or those who are victims or potential victims of such conduct; and
- (iv)-- Any such dissemination of information shall include a notice to the recipient that the information being furnished should not be disclosed publicly or disclosed to another government without the express written approval of the Attorney General or a designee after consultation with the FBI. (U)

i. PROTECTION OF LIFE, PROPERTY AND SENSITIVE INFORMATION (U)

- 1) The FBI may disseminate to another federal agency information relating to activity directed at its personnel, premises or property when the activity may involve injury to persons, substantial damage to premises, property or material, or the loss or compromise of national security or important foreign policy information. The dissemination of such information may identify United States persons when necessary to protect against such activity. (U)
- 2) The FBI may disseminate to a federal, state or local agency information relating to activity directed at officials of the United States, a foreign government or an international organization when the activity may result in injury to persons the receiving agency has an obligation to protect. The dissemination of such information may identify United States persons when necessary to provide against such activity. (U)

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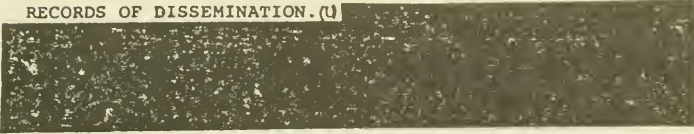
- 3) Nothing in these provisions limits the authority of the FBI to inform individuals whose safety or property is directly threatened by violence or conduct dangerous to human life, so that they may take appropriate protective safeguards. In so informing such individuals, no identification of United States persons shall be provided unless identification appears necessary to ensure safety. (U)

4. DOUBLE AGENT OPERATIONS (U)

~~SECRET~~

5. DISSEMINATION TO THE WHITE HOUSE. Dissemination of information by the FBI to the White House is governed by Attorney General procedures on White House dissemination, which are attached as an annex to these guidelines. (U)

C. RECORDS OF DISSEMINATION. (U)



- D. RETENTION. The FBI shall retain records relating to all foreign intelligence and foreign counterintelligence collection or support activities in accordance with a Records Retention Plan approved by the National Archives and Records Service. (U)

4/22/80
Date

By R. Civiletti
Attorney General

~~SECRET~~

ANNEXFBI DISSEMINATION TO THE WHITE HOUSE

I. GENERAL RESTRICTIONS (U)

- A. Information concerning elected officials or the political activities of persons in the United States may not be disseminated to the White House, unless the Attorney General has given specific approval based on a determination that specific information is essential for foreign intelligence or foreign counterintelligence purposes or for the conduct of foreign affairs. (U)
- B. Information obtained through extraordinary techniques may only be disseminated to the White House in accordance with Section VII.B.3. of these guidelines. (U)
- C. Information identifying U.S. persons or their activities in the United States may not be disseminated to the White House unless the identification is necessary to understand positive foreign intelligence or counterintelligence information or to assess its importance. (U)

II. WHITE HOUSE REQUESTS FOR INFORMATION (U)

- A. Generally, all requests for foreign intelligence information or foreign counterintelligence information made to the FBI by the White House staff shall be made through the National Security Council staff to the Attorney General. Requests may be made through the NSC staff directly to the FBI with simultaneous notice to the Attorney General under the following conditions:
 - 1. the request is for information in the categories set forth in paragraph IV below; and
 - 2. the request does not involve, or is not reasonably anticipated to involve, information identifying U.S. persons or concerning their domestic activities. (U)
- B. Upon any receipt of a direct request from the NSC for intelligence information, the FBI may refer the request to the Attorney General with a substantiated recommendation that the request be declined or modified. In such cases the Attorney General or a designee shall determine whether the NSC request should be modified or declined after consultation with the FBI and the NSC. (U)

III. FBI DISSEMINATION TO THE WHITE HOUSE (U)

- A. The FBI may disseminate information identifying U.S. persons to the White House through the NSC staff only after review by the Attorney General or a designee. (U)
- B. The FBI may disseminate information to the White House through the NSC staff without a specific request when it is in the categories set forth in paragraph IV below, does not specifically identify U.S. persons, and has been developed through:
 1. investigation, research, or analysis in response to regularly published, current intelligence requirements or other formal tasking from the Intelligence Community;
 2. an authorized counterintelligence investigation;
 3. a lawful criminal investigation; or
 4. studies and/or analyses of foreign intelligence or foreign counterintelligence information available to the FBI. (U)

IV. APPROVED CATEGORIES (U)

A. FOREIGN INTELLIGENCE INFORMATION

1. information indicative of policy positions adopted by foreign officials or governments;
2. information relating to possible changes in leadership positions of foreign governments, parties, or factions;
3. information on foreign officials' reactions to major foreign policy initiatives;
4. information indicative of imminent hostilities involving any foreign power;
5. information on foreign economic or foreign political matters which might have significant national security ramifications; and
6. information on high priority targets as set forth in regularly published requirements for the Intelligence Community. (U)

B. FOREIGN COUNTERINTELLIGENCE INFORMATION (U)

1. information on activities of foreign intelligence services in the United States which either are so aggressive in character as to be noteworthy in and of themselves, or may indicate policy judgments by foreign powers in their clandestine operations in the United States;
2. information on any efforts of foreign intelligence services to penetrate the White House or the National Security Council;
3. information on contacts by the National Security Council or other White House personnel with foreign intelligence service personnel; and
4. counterintelligence studies prepared for dissemination to the Intelligence Community. (U)

C. OTHER CATEGORIES (U)

Additional categories may be approved by the Attorney General in consultation with the Assistant to the President for National Security Affairs. (U)

V. EXIGENT CIRCUMSTANCES (U)

- A. When any delay in the immediate dissemination of intelligence information might cause imminent physical harm, imminent threat to national security, or an imminent significant adverse impact on United States foreign relations:
 1. requests for information in the categories set forth in paragraph IV which involve, or may reasonably be expected to involve, information identifying U.S. persons or concerning their domestic activities may be made directly to the FBI through the NSC staff, provided the Attorney General is notified through a simultaneous copy of the request; and
 2. dissemination of information to the NSC which would otherwise require review by the Attorney General or a designee may be made directly to the NSC, provided the Attorney General is notified through a simultaneous copy of the dissemination. (U)
- B. In all situations involving exigent circumstances, the NSC in requesting intelligence information, or the FBI in furnishing intelligence information, should to the extent possible consult with the Attorney General or a designee. (U)



*For Mont
Hedger*

U.S. Department of Justice

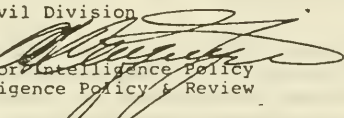
Office of Intelligence Policy and Review

Washington, D.C. 20530

OCT 14 1980

MEMORANDUM

TO: J. Charles Kruse
Special Litigation Counsel
Torts Branch, Civil Division

FROM: A.R. Cinguegrana 
Deputy Counsel for Intelligence Policy
Office of Intelligence Policy & Review

SUBJECT: Alliance to End Repression, et al.
v. City of Chicago, et al.
Civil Action No. 74 C 3268
American Civil Liberties Union, et al.
v. City of Chicago, et al.
Civil Action No. 75 C 3295
U.S.D.C. for the N.D. of Illinois

Your memorandum of October 3, 1980, asked, on behalf of the plaintiffs' attorneys in the captioned litigation, whether certain provisions of the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations (FCIG) were inconsistent with or in violation of Section 2-201(b) of Executive Order 12036. Specifically, you questioned whether United States persons who are associated with a group engaged in "international terrorism" as defined in Section II(M) of the FCIG would be entitled to the protections afforded U.S. persons by Section 2-201(b) of the Executive Order inasmuch as the terrorist group would by definition be considered a "foreign power" under Section II(K)(4) of the FCIG.

The short answer is that all U.S. persons, including those you describe, are entitled to and receive the protections set forth in Section 2-201(b) of Executive Order 12036 whether or not they are foreign powers or agents of foreign powers. Thus, use by the FBI for intelligence purposes of any of the techniques referred to in that provision, in cases where a warrant would be required if used for law enforcement purposes, requires either, depending on the relevant circumstances, a judicial warrant or Attorney General approval, as authorized by the President, based on a finding of probable cause to believe that the United States person is an agent of a foreign power. In addition, it should be noted that the authority of the Attorney General to grant such approval is limited in the FCIG to "foreign powers" as defined in Section II(K)(1), (2) or (3) of the FCIG, and would not be available for international terrorist groups under Section II(K)(4). For both of these reasons, therefore, there is no inconsistency between the Executive Order and the FCIG in this respect.

ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL COUNSEL

Department of Justice
Washington, D.C. 20530

23 MAY 1978

Mr. Morton Halperin
122 Maryland Avenue, N. E.
Washington, D. C. 20002

Dear Mr. Halperin:

This responds to your appeal under the Freedom of Information Act requesting a copy of the guidelines for the FBI's foreign intelligence collection activities and foreign counterintelligence investigations. The Attorney General has designated me to act on your appeal. Attached please find an edited copy of these guidelines, as well as a copy of a recent amendment which has become a part of the guidelines.

The excisions from these guidelines have been very carefully reviewed, and only those portions the disclosure of which could reasonably be expected to cause serious damage to the national defense or the conduct of foreign relations of the United States have been excised. Executive order 11652. See also draft of May 10, 1978 of proposed Executive order to replace E.O. 11652. All of the excisions address sources and methods of investigation and their applicability to certain categories of subjects. Without being specific, I can state that the guidelines establish levels of investigative activity, including methods and duration of investigations. Periodic Justice Department reviews of investigations of United States persons are mandated to insure the greater protection afforded to United States persons under these guidelines. Such reviews are conducted by Department of Justice officials designated by the Attorney General. With regard to non-United States persons, distinctions are based on the status of their entry into this country and the nature of the foreign power whose interests they serve. Greater investigative scope is contemplated with regard to countries that engage in intelligence activities contrary to the

interests of the United States. Standards for initiating investigations must be met and those standards quite obviously delineate the methods of collection of information which are permissible in a given situation. Special rules are also applied to insure that domestic groups which are targeted by foreign powers for infiltration are not subjected to overly intrusive investigative techniques by our own government. In addition, those techniques that may be regarded as particularly intrusive require the Attorney General's personal authorization.

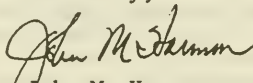
These guidelines, which were drawn up by a working group in the Department of Justice, were issued by former Attorney General Levi on May 28, 1976. They are subject to continuing review and amendment by the Department of Justice. The addendum to these guidelines entitled "Dissemination of Information Obtained by Extraordinary Techniques" which was recently issued illustrates our continuing concern to develop guidelines in the foreign counterintelligence area which are designed to permit effective foreign counterintelligence activities by the FBI and at the same time effectively to guard the rights and privacy of Americans.

These guidelines and all amendments to them have been provided to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate for their review. In addition they have been provided to the Intelligence Oversight Board. Such broad-based review of these guidelines provides, in our judgment, a responsible test of their reasonableness and should assure the American people that effective controls in this sensitive area have been established. We believe that it is important that the FBI's foreign counterintelligence investigations not be made more difficult by disclosures that reveal or tend to reveal information about methods of investigation or the circumstances of their use which, if acquired by sophisticated foreign intelligence services, would permit them to adjust their clandestine operations in this country to reduce their vulnerability to detection.

We sincerely regret the Department's delay in responding to your appeal. As I am sure you are well aware, this requested release required a careful review by the FBI and by the Department of Justice generally. We hope that you will find the portions we are able to release helpful to you. We have also endeavored to provide you with a paraphrased description of each of the deleted portions.

You may seek judicial review of this partial denial in the United States District Court for the district in which you reside, have your principal place of business, or in the District of Columbia which is the district in which the record is located.

Sincerely,



John M. Harmon
Assistant Attorney General
Office of Legal Counsel

Attachment

May 28, 1976

FOREIGN INTELLIGENCE COLLECTION AND FOREIGN COUNTERINTELLIGENCE
INVESTIGATIONSI. DEFINITIONS

A. **FOREIGN POWER:** Includes foreign governments, factions, parties, military forces, or agencies or instrumentalities of such entities, whether or not recognized by the United States, or foreign-based terrorist groups.

B. The determination that activities are PURSUANT TO THE DIRECTION OF a foreign power is based on the following factors:

1. control, leadership or policy direction by a foreign power;
2. financial or material support by a foreign power;
3. participation in leadership, assignments, or discipline by a foreign power;

(Deals with countries whose intelligence activities are contrary to interests of the United States.)

D. **FOREIGN INTELLIGENCE:** Information concerning the capabilities, intentions and activities of any foreign power relevant to the national security or to the conduct of foreign affairs of the United States.

CLASSIFIED BY
EXEMPT FROM GDS
SCHEDULE OF
EXEMPTION CODE
AUTOMATICALLY DECLASSIFIED

- E. FOREIGN COUNTERINTELLIGENCE: Investigative operations conducted within the United States to protect the national security from activities of foreign intelligence services, or to prevent terrorist activities undertaken pursuant to the direction of a foreign power.
- F. FOREIGN INTELLIGENCE OFFICER: An individual who is a member of a foreign intelligence service.
- G. FOREIGN INTELLIGENCE AGENT: An individual, not an officer of an intelligence service, engaged in clandestine intelligence activities pursuant to the direction of a foreign power.
- H. TARGET: An individual or organization which is, or is likely to become, the object of a recruitment effort by a foreign intelligence service, or by terrorists acting pursuant to the direction of a foreign power; or information, property, or activities in the United States which are or are likely to become the object of intelligence activity by a foreign intelligence service, or the object of activity by terrorists acting pursuant to the direction of a foreign power.

(Deals with categories of subjects of investigation.)

- K. FOREIGN VISITORS: Foreign nationals in the United States who are not resident aliens of the United States.
- L. TERRORIST ACTIVITIES: Criminal acts of violence dangerous to human life, intended to intimidate, coerce, demoralize or influence government or civil population.

- M. FOREIGN TERRORIST: One who engages in terrorist activities pursuant to the direction of a foreign power.

II. FBI RESPONSIBILITIES

In fulfilling its foreign intelligence and foreign counter-intelligence responsibilities the FBI is, under standards and procedures authorized in these guidelines, authorized to:

- A. Detect and prevent espionage, sabotage, and other clandestine intelligence activities, by or pursuant to the direction of foreign powers through such lawful foreign counterintelligence operations within the United States and its territories, including electronic surveillances, as are necessary or useful for such purposes.
- B. Conduct within the United States and its territories, when requested by officials of the Intelligence Community designated by the President, those lawful activities, including electronic surveillance, authorized by the President and specifically approved by the Attorney General, to be undertaken in support of foreign intelligence collection requirements of other intelligence agencies.
- C. Collect foreign intelligence by lawful means within the United States and its territories, when requested by officials of the Intelligence Community designated by the President to make such requests.
- D. Disseminate, as appropriate, foreign intelligence and foreign counterintelligence information which it acquires to appropriate Federal agencies, to State and local law enforcement agencies, and to cooperating foreign governments.
- E. Detect and prevent terrorist activities conducted pursuant to the direction of a foreign power.
- F. Coordinate all foreign counterintelligence efforts in the United States.
- G. Request other agencies of the U.S. Government to conduct, request agencies of foreign governments to conduct, or with the concurrence of the Director of Central Intelligence conduct investigations outside the U.S. in connec

- tion with matters within the investigative jurisdiction of the FBI.
- II. Conduct certain investigations within the United States based upon the request of law enforcement, intelligence or security agencies of foreign governments.

(Deals with investigative techniques and levels of investigative activity.)

(Deals with groups targetted for infiltration by foreign powers.)

E. In collecting foreign intelligence information or conducting foreign counterintelligence investigations, the FBI shall not use drugs, physical force except in accord with law, or any apparatus or technique contrary to fundamental standards of due process under the Constitution and laws of the United States.

F. FBI requests to an agency of the U.S. government or to a law enforcement, intelligence or security agency of a foreign government to conduct investigations abroad shall be limited to those cases which are within the investigative jurisdiction of the FBI.

(Deals with sources and methods of investigation.)

H. In conducting investigations outside the United States, the FBI shall not request or otherwise encourage, directly or indirectly, an agency of the U. S. Government or of a foreign government, to undertake investigative techniques, or employ investigative methods, which are forbidden by United States law to the extent it is applicable or by the Constitution of the United States; and, Extraordinary Techniques may not be used without the express approval of the Attorney General as provided in section VII of these guidelines.

(Same)

V. INVESTIGATIONS FOR FOREIGN GOVERNMENTS

- A.. Requests for FBI investigations within the United States on behalf of a law enforcement, intelligence or security agency of a foreign government, shall identify the information sought and specify the purposes of the investigation.

(Same)

C. Whenever a request from a law enforcement, intelligence or security agency of a foreign government raises a question of the propriety of the FBI providing assistance, the Bureau shall refer the matter to the Department of Justice before undertaking to provide information or assistance.

D. Foreign counterintelligence investigations undertaken upon request of a law enforcement, intelligence, or security agency of a foreign government shall be conducted in accordance with guidelines relating to foreign counterintelligence investigations conducted in the U.S.

(Same)

VI. FOREIGN INTELLIGENCE

The role of the FBI in collecting foreign intelligence information is limited as follows:

A. Requests for Collection of Information

1. The FBI may collect supplementary information to clarify or complete foreign intelligence information previously disseminated to the intelligence community, and may ~~collect information in response to requirements of topical interest from the U.S. Intelligence Board (USIB), or its successor, directed to the Intelligence Community.~~

2. Collection of information to clarify or complete foreign intelligence previously furnished, and in response to USIB requirements, shall be conducted only upon a request, made or confirmed in writing, by an appropriate member of the Intelligence Community. Copies of such requests shall be provided to the Department.

(Deals with methods of collection of intelligence.)

B. Collecting Foreign Intelligence Information

1. The FBI may collect foreign intelligence information for agencies in the U.S. Intelligence Community.
2. Foreign intelligence information shall be collected only upon the request, made or confirmed in writing, by an appropriate official of the U.S. Intelligence Community designated by the President. The requesting official shall certify that the information sought is foreign intelligence information relevant to the mission of the requesting agency, and the request shall set forth the reasons why the FBI is being asked to conduct the investigation.

3. Foreign intelligence information shall be collected only with the express approval of the Attorney General or his designee.

(Deals with methods and techniques of intelligence collection.)

C. Operational Support

1. The FBI may, upon request, provide operational support to agencies in the Intelligence Community.
2. Requests for operational support to the authorized mission of U.S. intelligence agencies shall be made or confirmed in writing, by an appropriate official of the U.S. Intelligence Community designated by the President. The requesting official shall describe the support required; the reasons why the FBI is being requested to furnish such assistance; and shall also certify that such assistance is relevant to the mission of the requesting intelligence agency.
3. Operational support to U.S. intelligence agencies shall be undertaken only with the approval of the Attorney General or his designee.
4. In collecting, or assisting other agencies to collect, foreign intelligence information by the use of Extraordinary Techniques as defined in these guidelines, the FBI shall follow the standards as provided in these guidelines.

DEPUTY ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL COUNSEL

Department of Justice
Washington, D.C. 20530

MAY 25 1978

Ms. Monica Andres
Center for National Security Studies
122 Maryland Avenue, N. E.
Washington, D. C. 20002

Re: FBI Guidelines

Dear Monica:

Enclosed are the pages from the Government's Memorandum in Opposition to Defendants' Motion to Suppress Evidence in United States v. Humphrey, No. 78-25-A. As you can see the statement here elaborates considerably upon the content of the "extraordinary technique" portion of the guidelines. I hope that this additional material is a useful supplement to the Department's Freedom of Information release.

Sincerely,

Larry A. Hammond

Larry A. Hammond
Deputy Assistant Attorney General
Office of Legal Counsel

Enclosures

Information about the capabilities, intentions, and activities of other governments is essential to informed decision-making in the field of national defense and foreign relations. The measures employed to acquire such information should be responsive to the legitimate needs of our Government and must be conducted in a manner which preserves and respects our established concepts of privacy and civil liberties.

Executive Order 12036 of January 28, 1978, maintains the essential oversight provisions and the divisions of responsibility set forth in Order 11905.

Pursuant to Section 5(h)(2) of Order 11905, the Attorney General, on May 28, 1976, promulgated guidelines for the foreign intelligence collection and foreign counterintelligence activities of the Federal Bureau of Investigation. 78-25-5 (Appendix B). The portion of these guidelines produced for counsel in this case describes standards and procedures for the utilization of extraordinary investigative techniques which include electronic surveillances by telephone and microphone. These guidelines require, in substance,

1. Their use, with the approval of the Attorney General, only where there is probable cause to believe that the person against whom the extraordinary technique is directed is an agent of a foreign power.
2. Minimization of the acquisition of information not relating to foreign intelligence or counterintelligence;

3. Specific findings to be made by the Attorney General in writing, before authorization of extraordinary techniques, that their use is necessary for one of the following reasons:
 - a. To protect the nation against actual or potential attack, or other hostile act of a foreign power;
 - b. to obtain foreign intelligence information deemed essential to the security of the nation;
 - c. to protect national security information against foreign intelligence activities; or
 - d. to obtain information relating to foreign affairs essential to the security of the nation.
4. That requests for use of extraordinary techniques be made in writing by a Presidential appointee, and
5. That where physical intrusion is necessary in the use of electronic surveillance, that the minimum physical intrusion necessary be used.

On February 3, 1977, at the request of the Attorney General, the President confirmed the delegation to the Attorney General of authority to approve warrantless electronic surveillance within the United States for foreign intelligence and counterintelligence purposes where requested

VII. EXTRAORDINARY TECHNIQUES

(Deals with techniques of intelligence collection.)

-
2. Procedures to be followed shall be reasonably designed to minimize the acquisition of information not relating to foreign intelligence or counter-intelligence.
-

investigative techniques.

4. The request for use of an extraordinary technique must be made in writing by a Presidential appointee, and must certify that the information sought cannot feasibly be obtained by other investigative techniques.

B. Specific Techniques

To fulfill its responsibilities as set forth in section II of these guidelines, the FBI may employ the following Extraordinary Techniques when their use is authorized by the President or by statute and justified in writing by the Director of the FBI, and in each case is approved in advance by the Attorney General in writing after he determines they meet the standards set forth in section VII A above.

(Deals with techniques of intelligence collection.)

2. Future Extraordinary Techniques: New technical devices which might intrude on privacy or otherwise violate provisions of these guidelines shall not be utilized without the express written authorization of the Attorney General.

(Same)

(Deals with mandated review procedures.)

IX. REPORTING, DISSEMINATION, AND RETENTION

A. Reporting

(Deals with review procedures and levels of investigative activity.)

3. FBI Headquarters shall promptly notify the Department of Justice of any request by a law enforcement, intelligence or security agency of a foreign government for information or assistance in a foreign counterintelligence matter involving a United States citizen. FBI Headquarters shall maintain, and provide to the Department of Justice upon request, statistics on the number of requests for assistance received from law enforcement, intelligence or security agencies of foreign governments involving United States citizens or persons not foreign officials or foreign visitors. The statistics shall identify the nature of the request, and whether assistance requested was furnished or declined.

(Same)

5. Reports on all foreign intelligence information collection and all counterintelligence investigations shall be maintained at FBI Headquarters, and shall be available for review by Department officials specially designated by the Attorney General.

6. Summaries furnished under paragraph 4 or reports of investigations reviewed under paragraph 5 concerning assets or potential assets may be prepared for review in a form which protects identity, but must include the status of the subject, i.e., whether a foreign national or American citizen, and a description of the techniques used for recruitment or attempted recruitment. These summaries or reports shall be available for review by the Attorney General or persons specially designated by the Attorney General.
7. To insure the security of foreign intelligence collection and counterintelligence investigations, the Department of Justice shall conduct reviews of FBI reports in a physically secure area at FBI Headquarters.

B. Dissemination

Other Federal Authorities

1. Subject to limitations set forth below, the FBI may disseminate facts or information obtained during foreign intelligence collection and counterintelligence investigations to other federal authorities when such information:
 - a. falls within their investigative jurisdiction;
 - b. constitutes foreign intelligence information required by federal agencies having primary

responsibility therefor;

- c. should be furnished to another federal agency as required by Executive Order 10450; or
 - d. may be required by statute, National Security Council directive, interagency agreement approved by the Attorney General, or Presidential directive.
2. When facts or information relating to criminal activity within the jurisdiction of other federal agencies is acquired by Extraordinary Techniques, during collection of foreign intelligence or counter-intelligence investigations, the FBI may:
- a. disseminate information pertaining to incomplete criminal activity threatening endangerment to human life;
 - b. disseminate information pertaining to completed criminal activity, with the concurrence of the Department of Justice, when the risk of compromising the source or the investigation by disclosing the means or source of information is outweighed by the desirability of identifying and prosecuting the offender.

All dissemination to other federal authorities shall include a notice to the recipient that the information being furnished should not be used for evidentiary purposes without the express written approval of the Department of Justice, after consultation with the FBI.

State and Local Government Authorities

3. Subject to limitations set forth below, the FBI may disseminate facts or information obtained during collection of foreign intelligence or counterintelligence investigations, relating to crimes within the jurisdiction of State and local governments, to the appropriate lawful authorities, provided such dissemination is consistent with the interests of U.S. national security.

4. When facts or information relating to criminal activity within the jurisdiction of State and local governments is acquired by Extraordinary Techniques during foreign intelligence collection or counter-intelligence investigations the FBI may:
 - a. disseminate information pertaining to uncompleted crimes of violence threatening endangerment to human life;
 - b. disseminate information pertaining to completed crimes of violence, with the concurrence of the Department of Justice, when the risk of compromising the source or the investigation by disclosing the means or source of acquiring the information is outweighed by the desirability of identifying and prosecuting the offender.

All dissemination to State or local government authorities shall include a notice to the recipient that the information being furnished should not be used for evidentiary purposes without the express written approval of the Department of Justice, after consultation with the FBI.

Foreign Governments

5. In accordance with Executive Order No. 11905 of February 18, 1976, the FBI may cooperate with foreign intelligence services by furnishing relevant information obtained during foreign intelligence collection and counterintelligence investigations, when such dissemination may serve the interest of U.S. national security.
6. Information received from or obtained at the request of a law enforcement, intelligence or security agency of a foreign government may be disseminated by the FBI, in the same manner as similar information acquired by the FBI within the United States, subject to the applicable guidelines.
7. Nothing in these guidelines shall limit the authority of the FBI to inform any individual(s) whose safety or property is directly threatened by planned force or violence, so that they may take appropriate protective safeguards.

8. The FDI shall maintain records to the extent required by law, of all disseminations made outside the Department of Justice, of information obtained during foreign intelligence collection and counterintelligence investigations.

(Same)

APPENDIX 3



**General Board of Church and Society
The United Methodist Church**

January 26, 1982

The Honorable Don Edwards, M.C.
House Annex Number one, Room 806
New Jersey Avenue and C Streets, S. E.
Washington, D. C. 20515

Attention: Ms. Catherine Leroy

Dear Mr. Edwards,

The United Methodist Church is one of the denominations within protestantism which has a membership of approximately 9.5 million people. The Board of Church and Society is one of the program agencies of the United Methodist Church which is mandated to voice the general social policies and the advocacy for its constituency.

After reviewing the December 4, 1981 Executive Order on United States Intelligence Activities (E.O. 12333). we found several areas about which we feel we must make known our reservations to the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee. Such major changes in the activities of the intelligence agencies should, we feel, follow the legislative route of formulation: proposed legislation, hearings, and a Congressional vote. The promulgation of the Executive Order authorizes activities without any direct input from the American people, which would be available through the legislative process.

As a church organization, we are particularly concerned that the Order contains no restrictions whatsoever on the use of missionaries as undercover intelligence operatives or agents, not even such minimal restrictions are placed upon academic contracting in section 2.7.

In addition, we are concerned about the provisions of section 2.4(d), which allow physical surveillance of U.S. persons abroad, simply if necessary "to obtain significant information." As a participant in many international church related activities, we

The Hon. Don Edwards

-2-

January 26, 1982

are troubled that this section allows the surveillance of church personnel overseas even if they are not suspected of any wrongdoing whatsoever.

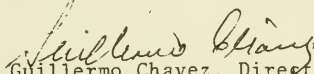
Moreover, we find the provisions of section 2.9 fraught with dangers. That section allows the intelligence agencies to infiltrate domestic organizations, and even allows the "influencing" of the organizations under certain circumstances. We work with hundreds of organizations around the U.S., some of them wholly church-related, some of them coalition groups dealing with a variety of social issues. There is nothing in this section which limits the activities of the FBI or the CIA to instances of suspected lawbreaking; without that restriction this seems to be an unprecedented intrusion on the rights of association of Americans.

Other questions stem from the ambiguity of the language used in writing the Order. For example, in section 1.1(b) what is the definition of "all means," of "full consideration of the rights of United States persons." In section 1.1(c), what is the definition of "other threats ... against ... United States corporations, establishments, or persons."

We therefore strongly urge that this Subcommittee hold more hearings on the Executive Order. These hearings should enable other organizations representing different views of the public to be heard. These hearings are not only necessary but imperative for the proper input on such an important change in the work of the intelligence agencies.

We would also like to urge that the secret guidelines be made available to the public so that there can be a better understanding of the application of the new Order. Without this, the Order's alleged protections are meaningless.

Sincerely yours,

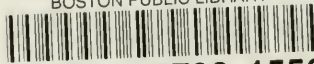

Guillermo Chavez, Director
Political and Human Rights Dept.
Board of Church and Society
The United Methodist Church

GC:hg

Enclosure

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